

REPORT
OF THE
Attorney General
OF THE
State of Florida

From January 1, 1917, to December 31, 1918

THOMAS F. WEST
(January 1, 1917, to September 1, 1917)

VAN C. SWEARINGEN
(September 1, 1917, to December 31, 1918)
Attorney General



TALLAHASSEE, FLORIDA
1919.

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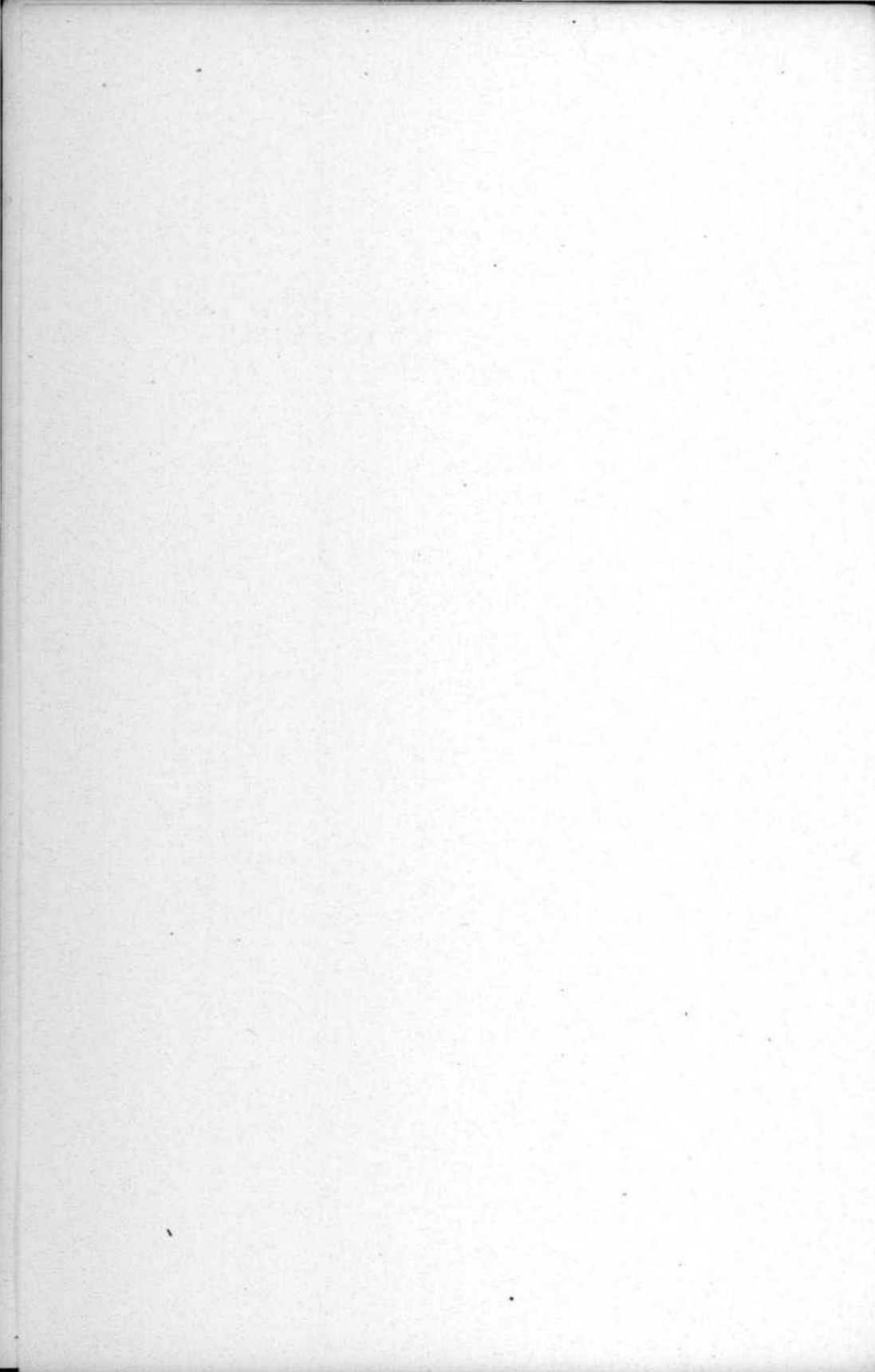
MEMORANDUM
FOR THE RECORD

LIST OF THOSE WHO HAVE HELD THE OFFICE OF ATTORNEY-GENERAL OF FLORIDA

JOSEPH BRANCH	1845-1846
AUGUSTUS E. MAXWELL.....	1846-1848
JAMES T. ARCHER.....	1848-1848
DAVID P. HOGUE.....	1848-1953
MARION D. PAPY.....	1853-1860
JOHN B. GALBRAITH.....	1860-1868
JAS. D. WESTCOTT, JR.....	1868-186--
A. R. MEEK.....	186--18—
SHERMAN CONANT	18—1871
J. B. C. DREW.....	1871-1872
H. BISBEE, JR.....	1872-1872
J. B. C. EUNNONS.....	1872-1873
WILLIAM A. COCKE.....	1873-1877
GEORGE P. RAINEY.....	1877-1885
C. M. COOPER.....	1885-1889
WILLIAM B. LAMAR.....	1889-1901
JAMES B. WHITFIELD.....	1901-1904
W. H. ELLIS.....	1904-1909
PARK TRAMMELL	1909-1913
*THOMAS F. WEST.....	1913-1917
**VAN C. SWEARINGEN.....	1917—

*Appointed Justice of Supreme Court Sept. 1, 1917.

**Appointed Attorney-General Sept. 1, 1917.



REPORT OF ATTORNEY GENERAL

STATE OF FLORIDA

ATTORNEY GENERAL'S OFFICE.

Tallahassee, December 31, 1918.

HONORABLE SIDNEY J. CATTS,
Governor of Florida.

SIR:

In obedience to the constitutional mandate directing each officer of the Executive Department to make full reports of his official acts, of the receipts and expenditures of his office and of the requirements of the same, to the Governor at regular periods, or whenever the Governor shall require it, and in compliance with long established custom by which such reports are made to cover the two calendar years immediately preceding each regular session of the legislature, I have the honor to submit herewith the report of this office covering the period from January 1, 1917, to December 31, 1918.

GENERAL SCOPE OF DUTIES.

The constitutional duties of the Attorney General are prescribed by Section 22 of Article IV of the Constitution, as follows:

"The Attorney General shall be the legal adviser of the Governor, and of each of the officers of the executive department, and shall perform such other legal duties as may be prescribed by law. He shall be reporter for the Supreme Court."

The duties generally prescribed by statute are found in Section 89 of the General Statutes, as follows:

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"The Attorney General shall reside at the seat of government, and shall keep his office in a room in the Capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of this State; he shall appear in and attend to such suits or prosecutions in any other of the courts of this State, or in any courts of any other State, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions, reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof."

The Attorney General is also required by numerous statutes to perform other duties, and he is required by common law to exercise certain powers and perform other duties of great public importance.

SERVICE ON BOARDS.

A great deal of the very important business of the State is performed and handled by Boards and Commissions, created by the constitution and by statutes, which consumes a considerable portion of the time of the State Of

ticials; among these Boards and Commissions are the following, all of which the Attorney General is a member:

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS.

The membership of this Board consists of the Governor and his entire cabinet, which includes the Attorney General, State Treasurer, Secretary of State, Superintendent of Public Instruction, and the Commissioner of Agriculture. This Board has the management and control of all the State Institutions, which includes the Industrial School for Boys, the Industrial School for Girls, the Hospital for the Insane, the State Prison Farm, and all State Convicts. Necessarily the control and supervision of these institutions places upon this Board innumerable important duties, and the Attorney General being the legal adviser of this Board makes it necessary for him to not only act as a member of the Board but also to do all the legal work in connection therewith.

STATE BOARD OF EDUCATION.

The membership of this Board consists of the Governor, Secretary of State, Attorney General, State Treasurer, and State Superintendent of Public Instruction. This Board is charged with the duty of taking charge of and handling all the lands held by the State for educational purposes; to direct and manage and provide for the safe keeping of all the educational funds of the State; and also many other duties in connection with the general educational system. The Attorney General is the legal adviser of this Board as well as a member thereof.

STATE VOCATIONAL EDUCATIONAL BOARD.

Under the provisions of Chapter 7376, Acts of 1917, the Legislature accepted the provisions of the Act of Con-

gress Approved February 23, 1917, entitled "An Act to Provide for the Promotion of Vocational Education; to Provide for the Cooperation with the State in the Promotion of such Education or Agriculture and the Trades and Industries; to Provide for Co-operation with the States in the Preparation of Teachers of Vocational Subjects; and to Appropriate Money and Regulate its Expenditures." Under the provisions of this law the State receives from the United States about Eighteen Thousand Dollars annually to aid in carrying on this work. The State Board of Education was designated as the State Vocational Educational Board and upon it was placed the duty of designating the schools at which would be taught vocational education in agriculture and the trades and industries, also the carrying out of the provisions of this law. The work of this Board has consumed considerable time.

STATE BOARD OF PARDONS.

This Board is composed of the Governor, Secretary of State, Attorney General, Comptroller, and Commissioner of Agriculture. Under the Constitution this Board may remit fines and forfeitures, commute punishment, grant pardons in all cases except treason and impeachment. With a prison population of some 1200 there are many among them who feel that the powers of this Board should be exercised in their behalf. Consequently a large number of applications for pardon are made to this Board, and as each case is carefully considered much time is consumed in these investigations.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND AND STATE BOARD OF DRAINAGE COMMISSIONERS.

These two Boards are composed of the same officials, and consist of the Governor, Attorney General, Comp-

troller, State Treasurer and Commissioner of Agriculture. The Trustees of the Internal Improvement Fund are vested with the title to and have the exclusive management and control of all lands belonging to the State, which were acquired by Acts of Congress of March 3, 1854, and September 28, 1850, which at this time amounts to approximately ———— acres. Upon the Board of Drainage Commissioners is laid the duty of establishing a system of canals, drains, levees, dikes and reservoirs to drain and reclaim the swamp and over-flowed lands within the drainage districts. Much time is consumed by the Attorney General and other members of the Boards in looking after matters concerning both of these Boards.

BOARD OF INSURANCE COMMISSIONERS.

The membership of this Board consists of the State Treasurer, Comptroller and Attorney General. Their general duty is to examine into the affairs of any company doing an insurance business in this State, or desiring to do such business.

STATE CANVASSING BOARD

This Board is required to canvass the returns of all General elections for State officers. Its membership consists of the Secretary of State, Comptroller, and Attorney General.

In addition to the duties laid upon the Attorney General, as a member of the above Boards, he is required to act with the Comptroller in passing upon questions arising under the provisions of Chapter 6422, Laws of Florida, commonly called the "Blue Sky Law;" with the Comptroller and State Treasurer in passing upon the value of securities deposited by trust companies under the provisions of Chapter 6155, Laws of Florida; with

the Comptroller and State Treasurer in matters of assessing railroad properties for taxation; and with the Commissioner of Agriculture in passing upon questions arising under the Provisions of the "Pure Food and Drugs Act."

OFFICIAL OPINIONS.

During the period covered by this report I have, as required by the Constitution and statutes of this State, from time to time, as requested by any of the administrative officers of the Executive Department of the State government, advised them and prepared written opinions for them upon various subjects touching their official duties and powers. Copies of all these opinions are preserved in this office and a number of them are incorporated in this report for the convenience use of such officers and others interested in the subjects covered by them.

In addition to these official opinions, although not expressly required by law to do so, but in order to assist in a proper interpretation and application of the statutes pertaining to their powers and duties, I have, when requested, prepared written opinions for other State officers, State boards and commissions, including the State Auditor, Hotel Commission, State Labor Inspector, State Board of Control, State Board of Health, and the Tax Commission. Some of these opinions are also incorporated in this report.

In addition to these written opinions the Attorney General is frequently called into consultation by other officers for legal advice relative to the various questions arising in their respective departments, and no small part of the duties of the office is that devoted to the investigations which are necessary to intelligently and properly advise in such cases. Necessarily much time is devoted to this work but because of its character no record of it can be made.

UNOFFICIAL OPINIONS.

In the report of this office immediately preceding this one the following statement on this subject appears and it may be repeated here:

"This office is not charged with the duty of advising county, municipal and district officers, but, as a matter of courtesy to those making inquiry, and with a view to assisting, when possible, to a uniform administration of the laws regulating the conduct and prescribing the powers and duties of such officers, I have, upon requests therefor, written a large number of what may be termed unofficial opinions. A number of these communications indicating the character and scope of the inquiries, are also incorporated in this report."

All such inquiries are replied to as promptly as the official duties of the office will permit, but it will be understood, of course, that official matters must have first consideration.

BOND ISSUES EXAMINED FOR THE STATE
BOARD OF EDUCATION.

In pursuance of the policy of the State Board of Education to invest such of the State school funds as are available for this purpose in securities issued by counties, municipalities and school and road districts in this State, it has been the duty of this office to examine a number of transcripts of the records of the proceedings had in the issuance of such bonds for the purpose of determining whether or not they were valid and enforceable obligations of the counties, municipalities or districts. Such issues as are purchased are held by the State Treasurer.

STATE STATUTES TESTED IN THE SUPREME
COURT.

During the period covered by this report the constitutional validity of a number of State statutes upon im-

portant subjects have been challenged and tested by appropriate court proceedings. Some of the cases which were handled by this office are enumerated below:

Among the Statutes so tested is Chapter 6456, Laws of Florida, as amended by Chapter 6957 passed upon in the case of *Lainhart v. Catts, et al*, 73 Fla. 735. This Statute is one making a direct legislative special assessment on lands embraced within the Everglades Drainage District for local benefits and the apportionment of rates thereon. The court held the Act valid and enforceable.

In the case of *Harry Goode v. F. M. Nelson, Sheriff*, 73 Fla. 29, the validity of Chapter 6528, Acts of 1913, which provided a penalty to be imposed upon any person who, with the intent to injure and defraud, obtains or procures money or other things of value on a contract to perform labor or service. This Act was declared ineffective and violative of the Federal Constitution.

In the case of *Ernest Amos, as Comptroller, and R. J. Patterson, J. V. Burke and John Neel, as the State Tax Commission, v. W. H. Mosely*, 74 Fla. 555, the validity of Chapter 6500, Acts of 1913, creating a State Tax Commission, and making appropriation to pay the salaries of the Commissioners, and to carry out the purposes of the Act, was tested, and the Supreme Court held the Act valid. This is a very important and interesting case, and in addition to the question of the constitutionality of the Act it also involves the question of what is the Journal of the Legislature.

In the case of *Joseph M. Fine v. D. W. Moran, Sheriff*, the validity of Chapter 7283, Laws of 1917, relating to intoxicating liquors, was sought to be declared unconstitutional. Upon consideration by the Supreme Court it was declared valid.

In the case of *Pensacola Lodge No. 497, B. P. O. E. v. State*, 78 So. 699, the validity of Chapter 7283, laws of 1917, was tested on other grounds than those in the case

of *Fine v. Moran*, above mentioned, and the Supreme Court held the Act valid.

In the case of *Van Pelt v. Hilliard*, 78 So. 693, the statute above mentioned, 7283, laws of 1917, was again involved, and held to be valid.

In the case of *Ex Parte Francis*, 79 So. 753, Chapter 7284, Acts of 1917, relating to intoxicating liquors (commonly known as the Quart a Month Law) was tested, and the Supreme Court declared the Act invalid.

The case of *Ex Parte Ayers*, 79 So. 763, was one involving the validity of Chapter 7284, and it was held in this case that the Act was invalid.

CONFERENCES.

Labor.

In the early part of 1918 the question of Labor Recruiters taking labor from the State to be used in industries engaged in producing products for the United States Government caused considerable disturbance among the sawmill and other industries of this State. In order that a more thorough understanding of the situation be reached a conference was held in May, 1918, between the United States District Attorney and Attorney General looking to an adjustment of these conditions. This conference resulted in the recruiters ascertaining just how they might obtain laborers and at the same time have the industries of this State conserved.

Ice Trusts.

During the Summer months of 1918 quite a few complaints were brought to the attention of the Attorney General with reference to the existence of a combination to control the price of ice in certain cities of the State. Immediately upon receiving these complaints the matter

was taken up with the State Attorney or County Solicitor with the request that an investigation be made. A meeting of the manufacturers of ice was called by the State Food Administrator, and at this meeting it was sought to adjust the price of ice.

CIVIL CASES.

Under the title Schedule of Civil Cases report is made of the civil cases which have had attention.

CRIMINAL CASES.

The Attorney General represents the State in the Supreme Court of the State in all criminal cases and in all habeas corpus proceedings.

Briefs on behalf of the State have been prepared and filed in the Supreme Court in all such cases and oral arguments on behalf of the State have been made in all of them in which oral arguments were requested and made by counsel for the plaintiffs in error.

PUBLISHING ACTS AND RESOLUTIONS OF THE STATE LEGISLATURE.

The acts and resolutions of the legislature of this State for the regular session of 1917 were published, with marginal abstracts, as required by law, under the direction of this office. For convenient use these acts and resolutions were published in two volumes, as was done in 1913, the general laws being placed in Volume 1 and the special and local laws in Volume 2.

An index to each of these volumes and an index to the Journals of each branch of the legislature were also prepared under the direction of this office, the index to the Journals having been prepared as provided by Chapter 6436, Acts of 1913, Laws of Florida.

REPORTER FOR THE SUPREME COURT.

The Attorney General is the Reporter for the Supreme Court.

During the period covered by this report four volumes of the opinions of the court have been published, namely, 72, 73, 74, and Vol. 75 is now in the hands of the printer.

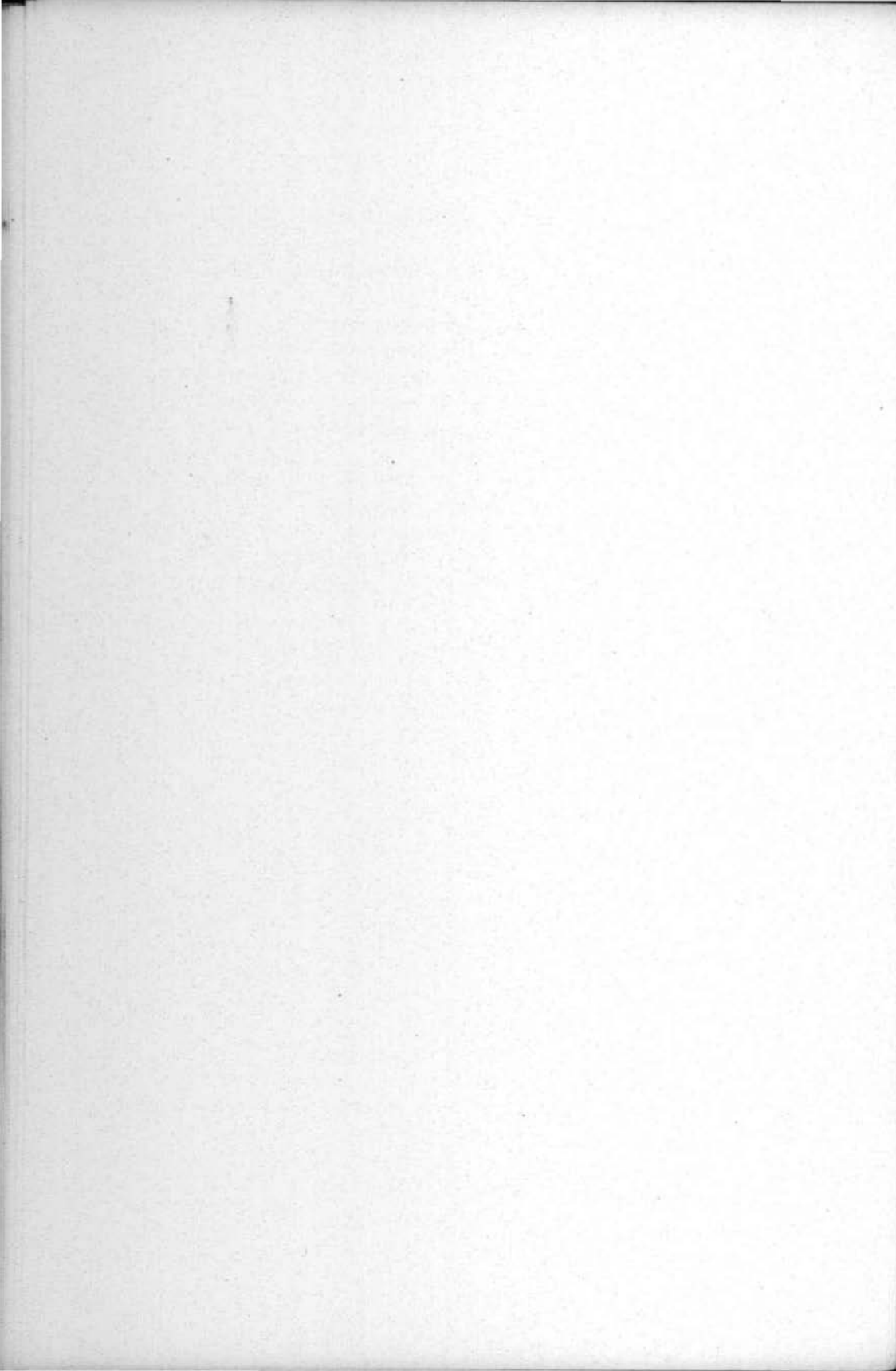
A great degree of care must be exercised in this work, as the opinion filed by the court is expected to be accurately reproduced in the reports.

An index-digest and a table of cases are also prepared as a part of each volume of these reports.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.



APPROPRIATIONS AND EXPENDITURES

Appropriations.

First six months, 1917—

Assistant	\$ 1,250.00
Assistant	1,250.00
Clerk	600.00
Stenographer	540.00
Incidental Expenses	300.00
Purchase of Books	250.00

For last six months, 1917—

Assistant	1,250.00
Assistant	1,250.00
Clerk	600.00
Stenographer	540.00
Incidental Expenses	1,350.00
Purchase of Books	250.00

For the year 1918—

Assistant	2,500.00
Assistant	2,500.00
Clerk	1,200.00
Stenographer	1,080.00
Incidental Expenses	700.00
Purchase of Books	500.00

Expenditures.

Assistant for years 1917-1918.....	\$ 5,000.00
Assistant for years 1917-1918.....	5,000.00
Clerk for years 1917-1918.....	2,400.00
Stenographer for years 1917-1918.....	2,160.00
Incidental Expenses for years 1917-1918..	1,333.16
Purchase of Books for years 1917-1918....	1,031.22

STATEMENT OF INCIDENTAL EXPENSE FUND.

Amount brought forward January 1,		
1917	\$	12.64
Appropriation for first six months,		
1917		300.00
Appropriation for last six months,		
1917		1,350.00
Appropriation for year 1918.....		700.00
Total in fund		\$2,362.64
Expended during year 1917.....	\$	819.81
Expended during year 1918.....		548.20
Total amount expended		1,368.01
Balance to credit of fund.....	\$	994.63

STATEMENT OF APPROPRIATION FOR PURCHASE
OF BOOKS.

Amount brought forward January 1,		
1917	\$	34.61
Appropriation for first six months,		
1917.....		250.00
Appropriation for last six months,		
1917		250.00
Appropriation for year 1918.....		500.00
Total in fund		\$1,034.61
Expended during year 1917.....		345.32
Expended during year 1918.....		685.90
Total amount expended		1,031.22
Balance to credit of fund.....	\$	3.39

ITEMIZED STATEMENT.

*Of Expenditures of Attorney General from Appropriation
for Incidental Expenses.*

1917.

January	—George I. Davis, Postmaster, box rent and stamps	\$ 6.00
	The American Institute of Crim- inal Law and Criminology, sub- scription to journal year 1917- 1918	3.00
	Western Union Telegraph Com- pany, messages	5.66
	Dixie Supply Company, bulbs....	3.00
	W. H. Dowling, Sheriff, serving motion Jas. Mack v. State.....	.95
	Southern Express Company, papers to Jacksonville	.25
	S. A. L. Ry. Co., mileage book....	20.00
	February —Edward Thompson Company, copy pamphlet supplement to Federal Statutes	.50
	Western Union Telegraph Com- pany, messages	8.35
March	George I. Davis, Postmaster, stamps	10.00
	—George I. Davis, Postmaster, stamps	40.00
	J. W. Corbett, file cabinet, ex- press charges and telephone....	58.70
	Southern Express Company, papers to Gainesville	.25
	H. & W. B. Drew Company, manu- script covers, plain and printed, and sheet paper	26.70

1917.

	T. J. Appleyard, stationery, copies motion and notice to dismiss case Pullman Co. v. Knott, copies brief on motion.....	27.69
	George I. Davis, Postmaster, deposit on order for envelopes....	16.80
	C. J. Perry, Sheriff, serving writ of mandamus in case Trustees I. I. Fund v. Fla. Coast Line Canal and Transportation Co.....	9.47
	Western Union Telegraph Company, messages	4.37
	T. J. Appleyard, envelopes.....	2.85
	George I. Davis, Postmaster, stamps	13.00
	A. J. Lewis, Sheriff, serving notice and motion to dismiss case Tim Allen v. State	1.10
April	—Southern Express Company, express charges	1.26
May	—Sou. Telephone & Construction Co., messages	2.60
June	—Sou. Telephone & Construction Co., messages	2.00
	Western Union Tel. Co., messages	3.85
July	—Sou. Express Company, express charges	.25
	J. F. Hill, pencils.....	2.00
	Sou. Telephone & Construction Co., messages	3.75
	Western Union Tel. Co., messages	7.35
	H. & W. B. Drew Co., score pads	3.49
	Exchange Bank, amount borrowed to pay Postmaster for stamped envelopes	153.00

1917.

	H. & W. B. Drew Co., Civil Docket	19.15
	George D. Barnard & Co., eyelets	2.30
	George I. Davis, Postmaster, stamps	5.00
	Seaboard Air Line Ry. Co., mile- age book	20.00
	*West Publishing Co., U. S. Com- piled Statutes 1916, Vols. 1-12..	65.00
August	—Sou. Express Company, express charges	.35
	Cox Furniture Co., desk	16.50
	T. F. West, expenses trip to St. Augustine in re, taxes due Flag- ler estate	11.25
	Western Union Tel. Co., messages	7.52
	Nail Ass'n for Constitutional Gov't, subscription to Constitu- tional Review	1.00
	Board Public Works, electric fan	17.50
	George I. Davis, Postmaster, stamps	1.00
	Board Public Works, electric fan	14.00
	*Lawyers Cooperative Pub. Co., L. R. A., 1917C., 17 R. C. L.....	11.50
September	—G. W. Jackson, county judge, to copy papers in Flagler estate..	3.50
	Western Union Tel. Co., messages	5.81
	H. & W. B. Drew Co., manuscript covers	2.60
	Sou. Express Company, express charges	.87
	H. & W. B. Drew Co., folders....	5.52
	Sou. Telephone & Construction Co., changing phone	1.00
	George I. Davis, Postmaster, stamps	15.00

1917.

October	—T. J. Appleyard, printing lines on letter heads	1.25
	Western Union Tel. Co., messages	2.63
	George D. Barnard & Co., changing letter heads	62.40
	Julius Drew, Annotation labels....	8.00
	I. W. Hudson, charges on notice and motion in case Jim Hicks v. State	1.78
	Van C. Swearingen, expenses trip to Quincy in case Mosely v. Amos	5.14
November	—H. R. Kaufman, box file.....	.35
	Western Union Tel. Co.....	4.68
	Van C. Swearingen, expenses trip Tavares attending court and setting in case State v. John H. Wiley	14.71
December	—T. J. Appleyard, cutting paper for civil docket index, printing index sheets	3.25
	Sou. Express Co., express on typewriter	.72
	Underwood Typewriter Co., machine	40.53
	Western Union Tel. Co., messages	1.67
	W. C. Dixon, dray charges on books	.55
	Columbia Law Review, subscription	2.50
	George I. Davis, Postmaster, stamps	5.00
N. B.—*Paid out of Incidental Expense Fund by mistake.		

1918.

January	—T. J. Appleyard, copies brief, James Francis v. Moran, and second sheets	\$ 32.20
	Sou. Express Co., express charges	.25
	George I. Davis, Postmaster, stamps	5.00
	Sou. Telephone & Construction Co., messages	.50
	Western Union Tel. Co., messages	4.06
February	—George D. Barnard & Co., paper and scratch pads	24.77
	J. F. Hill, small index and ledger	1.95
	Sou. Express Co., express charges	.27
	Western Union Tel. Co., messages	3.51
	Lawyers Cooperative Pub. Co., U. S. Advance Sheets, 1918 term..	2.00
	Central Law Journal Co., subscription	5.00
	D. R. Cox Co., waste basket.....	.65
March	—Sou. Express Co., express charges	.26
	Western Union Tel. Co., messages	5.69
	George I. Davis, Postmaster, stamps	7.00
April	—Sou. Telephone & Construction Co., messages	1.00
	Western Union Tel. Co., messages	3.42
	George I. Davis, Postmaster, stamps	10.00
May	—Western Union Tel. Co., messages	1.93
	Sou. Telephone & Construction Co., messages	.85
	George I. Davis, first payment on stamped envelopes and stamps..	10.60
June	—Western Union Tel. Co., messages	5.86
	Sou. Express Co., express charges	.52

1918.

	D. W. Moran, Sheriff, costs in case Will Simmons v. State....	1.00
	D. W. Moran Sheriff, costs in case Moore v. State	1.00
	Van C. Swearingen, expenses trip Marianna in re conference on labor situation and arrest of recruiters	7.99
July	—T. J. Appleyard, second sheets...	2.60
	Western Union Tel. Co., messages	3.11
	Frank Shepard Co., Florida Citations	4.00
	H. R. Kaufman, box files.....	1.00
	George I. Davis, Postmaster, stamps	12.00
	Geo. I. Davis, stamped envelopes..	90.00
August	—Sou. Express Co., express charges	.53
	Western Union Tel. Co., messages	1.33
	Van C. Swearingen, expenses trip Jacksonville, in re habeas corpus in case of labor recruiters.....	7.80
	Van C. Swearingen, expenses trip Jacksonville in re enforcement of Trust Law, Chapter 6933, laws of 1915	9.50
	Underwood Typewriter Co., machine	83.03
	W. C. Dixon, drayage.....	.25
September	—Sou. Telephone & Construction Co., messages	3.30
	Am. Ry. Express Co., express charges	.29
	Western Union Tel. Co., messages	3.95
	Central Law Journal Co., subscription	5.00
	George D. Barnard Co., stationery	25.80

1918.

	Van C. Swearingen, trip to Jacksonville, Sept. 18, in re conference U. S. Attorney and State Attorney on labor situation, arrest of labor recruiters, expense	17.95
October	—Am. Ry. Express Co., express charges	.31
	H. R. Kaufman, box files.....	1.00
	Western Union Tel. Co., messages	2.06
	Van C. Swearingen, expenses trip Jacksonville Aug. 15, in re enforcement of Trust Law, Chapter 6933, laws of 1915.....	9.50
	George D. Barnard Co., folders, pins and express	16.52
	Board Public Works, material for drop light	2.65
November	—George D. Barnard Co., envelopes and express	5.13
	Sou. Tel. and Const. Co., messages	1.85
	Am. Ry. Express Co., express charges	.29
	Western Union Tel. Co., messages	8.60
	Van C. Swearingen, expenses trip Jacksonville October 21, in re conference with State Attorney with reference to criminal laws in Fourth Circuit	19.18
	George I. Davis, Postmaster, stamps	15.00
December	—So. Tel. and Const. Co., messages	.65
	Western Union Tel. Co., messages	.94
	Van C. Swearingen, expenses trip to Fort Pierce, Nov. 10, in re collection of revenue case Dade Muck Land Company v. Eldred	

1918.

and case Consolidated Land Com- pany v. Eldred	44.24
George D. Barnard Co., 2 sets keys for typewriters	5.11
Van C. Swearingen, expenses trip Jacksonville Dec. 7, in re State v. Fla Coast Line Canal and Trans. Co.	15.95

ITEMIZED STATEMENT.

*Of Expenditures from the Appropriation for the Pur-
chase of Books.*

1917.

January	—West Pub. C., Installment on Feb. Rep., Vol. 22 Am. Dig. (K. N. S.) Vol. 89 S. E. Rep.....\$	43.85
February	—Am. Law Book Co., 9 Corpus Juris	7.50
March	—West Pub. Co., 159 N. W. Rep., 235 Fed. Rep. 113 N. E. Rep.....	12.00
	Lawyers Cooperative Pub. Co., L. R. A. 1916 E.....	5.00
April	—West Pub Co., Installment on Fed. Rep., Vol. 72 So. Rep., 90 S. E. Rep., 236 Fed. Rep.....	45.35
May	—L. D. Powell Co., Vol. 15 Standard Encyclopedia of Procedure.....	6.00
	American Law Book Co., 1917 An- notations Cyc. and Corps Juris.	8.00
	Lawyers Cooperative Pub. Co., Vol. 15 R. C. L.....	6.50
	The MacMillan Co., Holcomb's State Gov't U. S.....	2.25

1917.

	American Law Book Co., Vol 10 Corpus Juris	7.50
June	—Lawyers Cooperative Pub. Co., Vol. 16 R. C. L.....	6.50
July	—Frank Shepard Co., Shepard's Flor- ida Citations, subscription to.. West Pub. Co., 160 N. W. Rep., 237 Fed. Rep., 114 N. E. Rep., 23 Am. Dig. (K. N. S.), 238 Fed. Rep.	4.00 21.50
	West Pub. Co., July installment on contract, Fed. Rep., 73 So. Rep., 161 N. W. Rep., 91 S. E. Rep., 239 Fed. Rep.....	49.60
	H. Clay Crawford, Vol. 1 Laws 1913, Vol. 1 Laws 1915.....	1.00
	American Law Book Co., Vol. 11 Corpus Juris	7.50
	L. D. Powell Co., 1917 Sup. Ency- clopedia of Evidence.....	7.00
August	—G. P. Putnam's Sons, 1 Bacon Amer- ican Plan of Government.....	2.67
	L. D. Powell Co., Vol. 16 Standard Encyclopedia Procedure	6.00
October	—Banks Law Pub. Co., Vols. 242-243- 244 U. S. Reports.....	9.00
	West Pub. Co., October installment contract 10/13/16, Vol. 115 N. E. Rep., Vol. 74 So. Rep., Vol. 240 Fed. Rep., Vol. 162 N. W. Rep.	49.60
	West Pub. Co., Florida Compiled Laws 1914	18.00
	Lawyers Cooperative Pub. Co., Vol. 18 R. C. L.....	6.50
November	—Lawyers Cooperative Pub. Co., L. R. A. 1917 D.....	5.00

1917.	American Law Book Co., Vol. 12 Corpus Juris	7.50
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January	—Frederic B. Crossley, Subscription to Journal of American Institute Criminal Law and Criminology..	3.00
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	Callaghan & Co., Puterbaugh Com- mon Law, Puterbaugh Chancery, Wigmore Evidence, 5 Vols. S. W., Judson Taxation, First payment	15.00
March	—Lawyers Cooperative Pub. Co., Vol. 19 R. C. L., L. R. A. 1917 E-F..	16.50
	L. D. Powell Co., Vol. 17 Standard Encyclopedia of Procedure	6.00
	West Pub. Co., Vol. 243 Fed. Rep., Vol. 167 Pac. Rep., Vol. 168 Pac. Rep., Vol. 1 Second Decennial Di- gest	17.50
April	—American Law Book Co., Vol. 13 Corpus Juris	7.50
	Lawyers Cooperative Pub. Co., U. S. Supreme Court Reports, Di- gest Decennial Sup.	7.50
	West Pub. Co., Vol. 241 Fed. Rep., Vol. 92 S. E. Rep., Vol. 163 N. W. Rep., Vol. 244 Fed. Rep., Vol. 93 S. E. Rep., Vol. 164 N. W. Rep., Vols. 71-75 So. Dig.....	25.00
	Callaghan & Co., completing con- tract, second payment	32.50
	West Pub. Co., Vol. 76 So. Rep., Vol. 245 Fed Rep., two install-	

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	ments on contract 10/13/16, two installments contract 10/19/17.	132.70
	Brancroft-Whitney Co., initial payment on contract 2/27/18 (Am. Ann. Cas.)	30.00
June	—L. D. Powell Co., Vol. 18 Standard Encyclopedia of Procedure	6.00
	American Law Book Co., Vol. 15 Corpus Juris	7.50
	West Pub. Co., Vol. 117 N. E. Rep., Vol. 165 N. W. Rep., 3A K. N. S. Am. Dig., 169 Pac. Rep, 246 Fed. Rep., 94 S. E. Rep., Vol. 2 2nd Dec. Dig.	32.25
July	—Lawyers Cooperative Pub. Co., Vol. 20 R. C. L., L. R. A. 1918 A-B., Triennial Index Digest	19.50
	Brancroft-Whitney Co., installment on contract 2/27/18	30.00
	West Pub. Co., Vol. 170 Pac. Rep., 77 So. Rep., 166 N. W. Rep., 118 N. E. Rep., 247 Fed. Rep., Vol. 3 2d Dec. Dig., Supp. 1917 U. S. Compiled Statutes, installment on contract 10/13/16, installment on contract 10/19/17	96.10
September	—Lawyers Cooperative Pub. Co., L. R. A. 1918 C., Vol. 21 R. C. L....	11.50
	West Pub. Co., 171 Pac. Rep., 248 Fed. Rep., 95 S. E. Rep.....	11.75
November	—Banks Law Publishing Co., U. S. Reports Vol. 245-246-247	9.00
	Brancroft-Whitney Co., Amount due on quarterly contract (Ann. Cas.)	30.00

1917.

West Pub. Co., Sub. to Pac. Rep., Vol. 172, Sub. to N. E., 119, In- stallment on contracts 1916 and 1917	74.85
American Law Book Co., Corpus Juris, Vol. 16	7.50
L. D. Powell Co., Standard Ency- clopaedia of Procedure, Vol. 19	6.00

SCHEDULE OF CIVIL CASES

COMMON LAW.

*In the Circuit Court of the Eighth Judicial Circuit,
Alachua County, Florida.*

King Lumber Co., Plaintiff,

v.

State Board of Control, Defendant.

This is a suit brought by the plaintiff against the defendant to recover a balance alleged to be due by the defendant to the plaintiff on account of a contract for the construction of a building by the plaintiff for the defendant on the grounds of the University of Florida at Gainesville. This case is now pending in the court.

*In the Circuit Court of the Ninth Judicial Circuit,
Bay County, Florida.*

*Park Trammell, et al., as the Board of
Commissioners of State Institutions,
Plaintiffs,*

v.

H. C. Carr, et al., Defendants.

This suit was brought in the Circuit Court of Bay County against F. C. Carr, lessee of State prisoners, and his bondsmen for a balance due by him on account of his contract with the Board of Commissioners of State Institutions for the lease of such prisoners. A judgment was recovered against the defendants. A remitter was entered and judgment for \$500.00 was entered against each of the bondsmen.

*In the Circuit Court of the Second Judicial Circuit,
Leon County, Florida.*

*Park Trammell et al., as the Board
of Commissioners fo State Institutions,
Plaintiffs,*

v.

*DeLeon Naval Stores Company,
a corporation, et al., Defendants.*

This is a suit brought in the Circuit Court of Leon County against the DeLeon Naval Stores Company, a corporation, lessee of State prisoners, and its bondsmen for a balance due by it on account of its contract with the Board of Commissioners of State Institutions for the lease of such prisoners. The amount due was \$6,060.74. The executors of the estate of J. B. Conrad, deceased, one of the sureties on the bond of this defendant, have paid to the board the sum of \$2,000.00, the amount of the obligation of this decedent on the bond. This case is now pending before the court.

In the Supreme Court, State of Florida.

J. M. Cobb, et als., Plaintiff in Error,

v.

*Park Trammell, Governor, for the use of
Dade County, Defendant in Error.*

This case was instituted in the Circuit Court of Dade County. It was a suit upon an appearance bond and is reported in the 73 Fla. sup. Ct. Rept. 574, 74 So. Rep. 697.

CHANCERY SUITS.

In the Supreme Court, State of Florida.

*Ernest Amos, Comptroller,
Appellant,*

v.

M. C. Boley, Appellee.

This suit was instituted in the Circuit Court of Escambia County by the Appellee, to have the tax levy and assessment of Escambia County for the year 1914 declared invalid and to cancel certain tax certificates issued upon lands claimed to be owned by the Appellee. A demurrer was filed on behalf of the Appellant to the bill of complaint. Upon hearing this demurrer was over-ruled, and an appeal was taken from this ruling to the Supreme Court, where the case is now pending.

In the Supreme Court, State of Florida.

*Ernest Amos, Comperoller,
et al., Appellants,*

v.

*Jacksonville Mortgage and
Realty Company, Appellee.*

This suit was brought in the Circuit Court of Clay County, Florida, by the Appellee seeking to have cancelled certain tax certificates against real property alleged to be owned by the Appellee. A demurrer was filed to the bill of compliant, and upon hearing was over-ruled. An answer was filed and thereafter a statement of facts were agreed upon and the cause was heard upon the bill of complaint, answer and agreed statement of facts. The court in its final decree held the tax sales illegal and

void and directed the cancelling of the certificates. From this ruling and the ruling on the demurrer to the bill an appeal was taken to the Supreme Court where the cause is now pending.

*In the Circuit Court of the Fourth Judicial Circuit,
Duval County, Florida.*

Malcolm Barrs, Complainant,

v.

*Ernest Amos, as Comptroller,
Defendant.*

This is a suit brought to cancel certain tax certificates issued upon certain property in Duval County upon sale of such property because of the non-payment of taxes for the years 1907, 1908 and 1909. A demurrer on behalf of the defendant has been filed but has not yet been disposed of.

*In the Circuit Court of the Fourteenth Judicial Circuit,
Jackson County, Florida.*

*Marianna and Blountstown Railroad
Company, Complainant,*

v.

*Ernest Amos, as Comptroller, and
H. A. Bowles as Sheriff of Jackson
County, Defendants.*

This was a suit brought to restrain the execution of a warrant issued by the Comptroller against complainant for the collection of certain license taxes alleged to be due October 1, 1916, and unpaid by the complainant to the State. A temporary restraining order was made. This suit has been dismissed upon an agreement of the parties thereto.

In the Supreme Court, State of Florida.

*Ernest Amos, Comptroller,
Appellant,*

v.

R. M. Cary, Appellee.

This suit was instituted in the Circuit Court for Escambia County by the appellee against the State Comptroller, seeking to have certain tax certificates covering land alleged by the appellee to be owned by him, and to have declared null and void the assessment of taxes for the years 1913, 1914 and 1915. A demurrer was filed to the bill of complaint, which was over-ruled. An appeal was taken from the order of the court over-ruling the demurrer, to the Supreme Court, where the cause is now pending.

In the Supreme Court, State of Florida.

*The Texas Oil Company, a
corporation, Appellant,*

v.

*Ernest Amos, as Comptroller,
Appellee.*

This suit was instituted by the appellant to restrain the collection of the license tax placed upon tank cars under the provisions of Section 46 of Chapter 6421. A demurrer was filed to the bill which was sustained. From the order of the Circuit Judge sustaining the demurrer an appeal was taken and the case is now pending in the Supreme Court.

In the Circuit Court, St. Johns County.

State of Florida and St. Johns County,
Complainant,

vs.

Wm. H. Beardsley, et als., Trustees
Last Will and Testament Henry M.
Flagler, Defendants.

This suit was instituted in the Circuit Court of St. Johns County by the State and St. Johns County seeking to collect taxes assessed against the defendants in St. Johns County amounting to \$232,500.00. Upon final hearing in the Circuit Court the bill of complaint was dismissed. Appeal will be taken from the final decree to the Supreme Court.

Messrs McWilliams and Bassett, of St. Augustine, represent St. John County and are actively engaged in the conduct of the suit.

The tax involved in the above suit is upon personal property which had not before been assessed.

In the Circuit Court, Okeechobee County.

St. Lucie County, et al.,
Complainants,

vs.

Okeechobee County, et al.,
and Ernest Amos, as Comptroller,
Defendants.

This suit was instituted by the Complainants asking for an accounting between the counties of St. Lucie and Okeechobee to determine which county was entitled to certain funds held by the Comptroller. The case was finally settled by agreement.

*In the Circuit Court, Second Judicial Circuit, Leon
County.*

*Sidney J. Catts, Governor, et al.,
Plaintiff,*

v.

*George Lewis, as Executor,
Defendant.*

This suit was instituted by the plaintiff against the defendant for an accounting as Executor of the estate of James D. Westcott, and is now pending in the court.

The following suits were instituted in the Circuit Courts of the State and each involves the validity of tax assessments. The Attorney General either conferred with the Attorney for the defendant, or represented the defendant in each of these cases:

In the Circuit Court, St. Lucie County.

*Dade Muck Land Co.,
Complainant,*

vs.

*P. C. Elred, Clerk Circuit
Court, Defendant.*

In the Circuit Court, Lee County.

*Dade Muck Land Co.,
Complainant,*

vs.

*J. E. Garner, Clerk Circuit
Court, Defendant.*

In the Circuit Court, Broward County.

*Dade Muck Land Co.,
Complainant,
vs.
Frank Bryan, Clerk Circuit
Court, Defendant.*

In the Circuit Court, Clay County

*Jennings Artesian Farm Land
Co., Complainant,
vs.
L. T. Ivey, Clerk Circuit
Court, and W. C. Foster, et al.,
Defendants.*

INJUNCTION, MANDAMUS AND OTHER EXTRA-
ORDINARY LEGAL PROCEDURE.

In the Supreme Court, State of Florida.

*Joseph Dixon Crucible Co., a New Jersey
Corporation, Appellant,
v.
Chas. E. Allen, Tax Collector, Citrus
County, Florida, Appellee.*

This was a case originating in the Circuit Court of Citrus County, wherein the Appellant sought to enjoin the Appellee from collecting taxes which had been assessed against it on the assessment roll for the year 1915. After various proceedings in the Circuit Court the bill was dismissed, and thereupon the case was appealed to the Supreme Court where it is now pending.

*In the District Court of the United States,
Northern District of Florida.*

*Empire Cotton Oil Co.,
Complainant,*

vs.

*W. A. McRae, Commissioner of
Agriculture, Defendant.*

The Complainant was engaged in the manufacture of cotton seed meal, cotton seed oil, and fertilizers, outside of the State of Florida. The Commissioner of Agriculture directed that this Company comply with Section 5 of Chapter 5660, in the matter of filing with him the name of the principal agent or agents in this State. The Complainant did not do this, stating that it had no such agents. Whereupon the Commissioner of Agriculture sought to have this Company's products excluded from the State. The Complainant filed its bill seeking to enjoin the Commissioner of Agriculture from interfering with shipments of its products. The cause was heard before the Court in New Orleans and a restraining order was granted the Complainant. The Complainant later agreed to comply by naming an agent in this State, which closed the controversy.

In the Supreme Court, State of Florida.
Ernest Amos, as Comptroller, and
R. J. Patterson, et al., as State
Tax Commission, Appellant,
vs.
W. H. Moseley, Appellee.

This suit was instituted in the Circuit Court of Leon County seeking to enjoin the Comptroller from paying

the salaries of the Tax Commission. A restraining order was issued by the Circuit Court. Thereupon the case was appealed to the Supreme Court and the judgment of the Circuit Court was reversed. This case is reported in 74 So. 619.

In the Supreme Court, State of Florida.

*Ernest Amos, Comptroller,
Appellant,*

vs.

*Postal Telegraph Cable Co.,
Appellee.*

This suit was instituted in the Circuit Court for Duval County by the Appellee seeking to enjoin the Appellant from collecting a license tax alleged to be due and payable to the State. The Appellant filed a demurrer to the bill which was overruled, and from this order an appeal was taken to the Supreme Court. The order of the Circuit Court overruling the demurrer was sustained. This case will be reported in 76 Florida, Sup. Ct. Rep.

In the Circuit Court, Duval County.

*District Grand Lodge No. 27,
Grand United Order of Odd Fellows
of the State of Florida,
Complainant,*

vs.

*J. C. Luning, State Treasurer,
Defendant.*

This suit was instituted by the Complainant to enjoin the State Treasurer from enforcing the provisions of

Chapter 6970, Laws of Florida, in so far as it was concerned, claiming that under Section 29 as amended by Chapter 7344 it was exempt from its provisions. A temporary injunction was granted. A motion to quash was made and overruled. The case is now pending.

In the Circuit Court, Taylor county.

Burton-Swartz Lumber Co.,
Complainant,
vs.
A. C. Hendry, Tax Collector,
Defendant.

The Complainant filed its bill praying for an injunction to issue against the defendant restraining him from collecting certain taxes assessed against it. A temporary restraining order was granted. The case is now pending. Hon. Chas. E. Davis, of Madicon, represents the County in this suit.

In the Circuit Court, Liberty County.

Mercer Turpentine Company,
Complainant,
vs.
R. H. Weaver, Tax Collector,
Defendant.

This suit grew out of the complainant having paid its taxes to a former Tax Collector, but who did not give credit on the tax books therefor. After the defendant became Tax Collector he sought to collect the taxes as shown by the tax books to be due the Complainant,

whereupon the Complainant filed its bill for injunction to restrain the Tax Collector from proceeding with the collection of the taxes, alleging that they had been paid. A temporary restraining order was granted. The amount of the tax was included in the shortage reported by the State Auditor and the case was settled.

In the Circuit Court, Dade County.

Charles LeJune, Complainant,

vs.

*D. W. Moran, Sheriff, R. E. Rose,
State Chemist, W. A. McRae, Com-
missioner of Agriculture, and C. E.
Johnson, Inspector, Defendants.*

This suit was instituted by the Complainant seeking to enjoin the defendants from attaching certain grapefruit under the provisions of the Immature Citrus Fruit Law. A temporary injunction was granted. A motion to quash this writ was made and denied. The case is being prepared for an appeal to the Supreme Court. Hon. John C. Gramling, State Attorney, handled this case in the Circuit Court.

In the Supreme Court, State of Florida.

*John W. Rast, Tax Collector,
Appellant,*

v.

George W. Hulvey, Appellee.

This case was instituted in the Circuit Court of Duval County by the appellee seeking to have the Tax Collector

enjoined from collecting taxes which had been assessed against property alleged to be owned by him. A demurrer was filed to the bill and was overruled. Thereupon an appeal was taken to the Supreme Court, where the case is now pending.

In the Supreme Court, State of Florida.

*Camp Phosphate Company, a
Corporation, Appellant,*

v.

*Charles E. Allen, Tax Collector
of Citrus County, Appellee.*

This was a case originating in the Circuit Court of Citrus County. The appellant filed its bill in the Circuit Court seeking to have the appellee enjoined from collecting taxes which had been assessed against property alleged to be owned by it for the year 1915. After various proceedings in the Circuit Court the bill was dismissed, and the case was appealed to the Supreme Court, where it is now pending.

In the Supreme Court, State of Florida.

*State ex rel, Hellen M. Carter,
Relator,*

v.

*W. N. Sheats, State Superintendent of
Public Instruction, Respondent.*

This was a case brought by the relator, Hellen M. Carter, in the Supreme Court seeking mandamus to compel the respondent to issue her a Teachers Life Certificate under the provisions of Section 371 of the General Sta-

tutes of Florida, as amended by Chapter 6164, Acts of 1911. An alternative writ of mandamus was issued. A motion was made to quash the writ and denied. A petition for rehearing was made and denied. The case is reported in 73 Fla. Sup. Ct. Rept. page 176.

In the Supreme Court, State of Florida.

State ex rel, Hellen M. Carter,
Relator,

v.

W. N. Sheats, State Superintendent of
Public Instruction, Respondent.

This was a case growing out of the case just above mentioned. The relator sought by mandamus to cause the respondent to issue to her the same form of Teachers Life Certificate as issued under the provisions of Section 370 of the General Statutes of 1906. Mandamus was issued. This case is reported in 73 Fla. Sup. Ct. Rept. page 544.

In the Supreme Court, State of Florida.

R. L. Kennerly, Appellant,

vs.

Ernest Amos, Comptroller,
Appellee.

This Appellant instituted suit in the Circuit Court of Leon County seeking by mandamus to compele the Appelle to cause the cancellation of certain tax certificates. The Appellee filed a demurrer to the bill which was sustained. From the order sustaining the demurrer an appeal was taken to the Supreme Court where the cause is now pending.

In the Supreme Court, State of Florida.

State ex rel, Daniel A. Finlayson,
Complainant.

vs.

Ernest Amos, Comptroller,
Defendant.

This was a suit asking for writ of mandamus to cause the Comptroller to register the motor driven vehicle of the Complainant and to assign to it a distinctive number, he having made application and paid to the Comptroller five dollars—the fee which Complainant claimed was the one provided for in Chapter 7275, Laws of 1917, for such motor vehicles as he desired to have registered. After various proceedings the Court granted the writ.

In the Circuit Court, Alachua County.

State ex rel. E. C. F. Sanchez,
and Mabel A. B. Sanchez,
Complainants,

vs.

S. H. Wings, Clerk Circuit Court,
Defendant.

The Complainant filed a bill praying for a writ of mandamus to issue to cause the Appelle to permit the redemption of certain tax certificates, alleging that such redemption was authorized by Chapter 7272 Laws of 1917. The defendant filed a demurrer to the bill, and the case is now pending.

In the Supreme Court, State of Florida.

State Ex Rel, H. T. Walton,
Petitioner,

vs.

American Railway Express Co.,
Defendant.

This was a suit instituted by the petitioner in the Supreme Court praying for a writ of mandamus to be issued to cause the defendant to receive for transportation intoxicating liquors in quantities other than those authorized by the provisions of Chapter 7733, approved December 4, 1918. The Attorney General represented the State, amicus Curiae in this case.

In the Supreme Court, State of Florida.

Dixie Holding Company,
Appellant.

v.

Frank Brown, Clerk Circuit
Court, Duval County,
Appellee.

The appellant filed a bill in the Circuit Court for Duval County, praying for a writ of mandamus to issue to cause the appellee to permit the redemption of certain tax certificates, alleging that under the provisions of Chapter 7272 Laws of 1917, such redemption was authorized. The appellee filed a demurrer to the bill which was sustained. The appellant took an appeal from the order sustaining the demurrer to the Supreme Court where the case is now pending.

In the Supreme Court, State of Florida.

State ex rel. Jackson, v. Crawford, Secretary of State:

On November 7, 1916, J. C. Black was elected tax collector of Liberty County, and commissioned for four years, and duly entered upon the duties of the office. On the 20th of March, 1918, the Governor suspended him for alleged malfeasance in office. On the 25th of March, 1918, the Governor notified the Secretary of State that he had appointed Robert H. Weaver, as tax collector for Liberty County. On the 28th of March, 1918, the resignation of J. C. Black was delivered at the executive office in Tallahassee, and on the 8th of April the Governor issued a commission to Robert H. Weaver to hold the office of tax collector of Liberty County "until the qualification of his successor, who may be chosen at the ensuing general election."

The relator, A. C. Jackson, duly qualified at the primary election held on June 4, 1918, for the nomination as the candidate of the Democratic party for the office of tax collector of Liberty County, to be chosen at the general election to be held on the 5th day of November, 1918. There was no other candidate for this office at the June primary, and the relator became under the statute the candidate of the Democratic party for the position. His name was duly certified to the Secretary of State as one of the nominees of the Democratic Party.

This proceeding is to require the Secretary of State to amend the notice and certificate of the offices and vacancies in the County of Liberty to be filled at the general election to be held on November 5, 1918, so that the office of tax collector may be and appear among those to be filled at said election.

The Supreme Court held that "As there was a vacancy in the office of tax collector for Liberty County, caused

by the resignation of Black and the commissioning of Weaver to fill the vacancy till the election and qualification of a successor at the ensuing general election, it was the duty of the Secretary of State to give official notice of the vacancy by publication and by sending notice of the vacancy to the sheriff of the county as required by the statute. That duty having been misapprehended, it may be indicated by mandamus.

The motion to quash the return was granted, and the peremptory writ awarded on October 24, 1918.

CERTIORARI.

Cary Benton v. State:

Cary Benton was convicted in the County Judge's Court of Walton County of the offense of illegally selling intoxicating liquors in said county, which county had voted against such sale. Original petition by Benton for writ of *certiorari* was granted by the Supreme Court to review the judgment of the Circuit Court affirming judgment of the County's Judge's Court by which petitioner was convicted. Motion on part of the State to quash said writ was granted July 2, 1917. Reported in 74 Fla. 30, 76 So. 341.

BOND ESTREATURE.

State v. H. E. Tolar, J. B. Barton and G. S. Mobley:

This proceeding was brought by the State for the use and benefit of Suwannee County against Burton to estreat a bail bond, Judge Mallory F. Horn presiding—judgment for defendant. Upon writ of error judgment was reversed February 13, 1917. Reported in 73 Fla. 357, 74 So. 408.

QUO WARRANTO.

Authority was given by the Attorney General to the parties whose names appear below to institute proceedings in *quo warranto*. Statement of the purpose of the suit is given in each case.

A. J. Henry, Lake City, Fla.

September 24, 1917.

Authority granted to use the name of the Attorney General to test the validity of Special Road and Bridge District Number 1, of Baker County..

John F. Burket, Sarasota, Fla.

December 18, 1917.

Authority granted to use the name of the Attorney General to test the legality of the incorporation of Sarasota Heights, Manatee County.

Tom B. Stewart, DeLand, Fla.

October 8, 1918.

Authority granted to use the name of the Attorney General to test the corporate existence of the Lake Ashby Drainage District, Volusia County.

R. H. Rowe, Madison, Fla.

October 17, 1918.

Authority granted to use the name of the Attorney General to test the right of the trustees, of a Special Tax School District in Madison County, to exercise and perform the functions and duties of such Trustees; such Special Tax School District having been created by an election held in Madison County September 3, 1918.

HABEAS CORPUS PROCEEDINGS DISPOSED OF
BY THE SUPREME COURT DURING THE
YEAS 1917 AND 1918.

In the Supreme Court, State of Florida.

George Ayers, Ex Parte:

George Ayers was on July 8, 1918, tried and convicted of violating Chapter 7284, Laws of 1917, whereupon Ayers made application to the Supreme Court and obtained a writ of habeas corpus to test the validity of his conviction. Judgment was reversed August 15, 1918. Reported in 79 So. 763.

Lawrence Curry v. D. W. Moran, Sheriff:

Petition for writ of habeas corpus was denied by the Circuit Judge and Curry was remanded on a charge that said Curry being then and there an alien or nonresident of the State of Florida, did then and there engage in taking fish with a hook and line only from the salt waters of the State of Florida in a boat, which said boat was then and there engaged in the fishing industry in the State of Florida in the County of Dade, and which said boat was then and there operated in part by him, and that at the time of so engaging in said fishing industry he had not paid the additional license tax required of aliens fishing from boats, etc. Upon writ of error judgment was affirmed August 15, 1918. Reported in 79 So. 637.

Lawrence Curry v. D. W. Moran, Sheriff:

Application for writ of habeas corpus was denied by the Circuit Judge and Curry was remanded on a charge that he, "being then an alien or nonresident of the State of Florida, did then and there engage in taking fish from the salt waters of this State in Dade County, Florida, for purposes other than his own individual use, with hook and line only, without securing the license required," etc. Upon writ of error judgment was reversed August 15, 1918. Reported in 79 So. 639.

Geo. E. Evans v. W. H. Dowling, Sheriff:

Geo. E. Evans was detained on a fugative warrant issued January 23, 1917, by E. E. Willard, Justice of the Peace of Eleventh District, Duval County, upon affidavit of T. L. Johnson, charging Evans as being a fugative from justice from Cook County, Illinois, where he was charged with "wire-tapping," a crime against the laws of that State. Forthwith a writ of habeas corpus was procured and on January 24, 1917, hearing was had before the Circuit Judge of Duval County, and Evans was remanded to custody to await the extradition warrant of the Governor. Upon writ of error application for bail was dismissed upon motion of Attorney General. Reported in 73 Fla. 1239, 75 So. 620. For some reason the Governor revoked his Extradition Warrant while this case was pending before the Supreme Court and Evans was released from custody.

Jos. M. Fine v. D. W. Moran, Sheriff:

Joseph M. Fine was arrested and taken into the custody of the Sheriff of Dade County under a warrant is-

sued out of the County Judge's Court, based upon an affidavit by William F. Hunt, charging Fine in five counts, with a violation of Chapter 7283, Laws of Florida of 1917. Fine filed his petition in the Circuit Court for a writ of habeas corpus, and asked for his discharge from custody upon the ground that the Act was unconstitutional. Upon hearing the Circuit Judge remanded petition to the custody of the Sheriff. To this judgment Fine took a writ of error. Judgment was affirmed December 6, 1917. Reported in 74 Fla. 417, So. 533.

James Francis v. D. W. Moran, Sheriff:

James Francis was arrested on a warrant based upon information filed in the Criminal Court of Record of Dade County, charging him with a violation of Sections 1, 2, 3, and 4 of Chapter 7284, Laws of Florida, 1917, known as the "Quart a Month Law." A writ of habeas corpus was granted and issued by the Judge of the Circuit Court of Dade County upon petition of Francis which petition alleged that he was illegally held in that the law above mentioned was unconstitutional and void. Upon hearing said law was declared to be unconstitutional and the court entered an order releasing petitioner. Upon writ of error judgment was reversed, August 15, 1918. Reported in 79 So. 753.

Harry Goode v. F. M. Nelson, Sheriff:

Harry Goode, having been convicted in the County Court for Bay County and sentenced and committed to imprisonment upon a charge that he did contract with one J. B. T. to work and perform labor for him by reason of such contract and with the intent to injure

and defraud him, obtained money from him to the amount and value of \$37.00 as a credit and advancement, and without just cause failed to perform said labor as contracted, and, demand being made for the payment of said money, failed to pay said money, etc., in accordance with Sec. 1, c. 6528, Acts of 1913 (Comp. Laws 1914, Sec. 3320a).

On habeas corpus before the Circuit Judge, the petitioner was remanded to custody under the commitment, and from such order a writ of error was sued out to the Supreme Court of Florida. The law was held unconstitutional and judgment of Circuit Court was reversed January 18, 1917. Reported in 73 Fla. 28, 74 So. 17.

D. E. Griswold v. W. T. Jones, Sheriff:

Griswold was arrested for obtaining money by false pretense, and thereupon filed petition with this Court for writ of habeas corpus, which writ was quashed and petitioner remanded on June 27, 1918.

W. H. Hunnicutt v. State:

W. H. Hunnicutt was arrested in Duval County for violating Chapter 6860, Laws of Florida, Acts of 1916. Forthwith a petition for a writ of habeas corpus was filed in the Circuit Court, which petition was denied, and petitioner took writ of Error to the Supreme Court. Dismissed September 15, 1918.

Houston Keen v. W. E. Murry, Sheriff:

Houston Keen was convicted in the County Judge's Court of LaFayette County of larceny, and thereafter pre-

sented a petition for a writ of habeas corpus to the Circuit Judge of said County, said Judge denying said petition. Upon writ of error judgment was affirmed January 28, 1918. Reported in 75 Fla. —, 77 So. 855.

P. T. McClellan v. W. H. Lyle, Sheriff:

P. T. McClellan was convicted before the County Judge in and for Suwannee County for the unlawful transportation and possession of intoxicating liquors in said County in violation of Chapter 7284, Laws of Florida, Acts of 1917. Petition for writ of habeas corpus was presented to the Circuit Court and upon hearing writ was granted. Petitioner moved to be discharged from custody on ground of unconstitutionality of the law, which motion was denied. Upon writ of error judgment was reversed August 15, 1918. Reported in 76 Fla., 79 So. 769.

A. C. Marshall, ex parte:

A. C. Marshall was arrested by the Chief of Police of the City of Jacksonville under a warrant based on an affidavit charging him with operating an auto buss with a seating capacity of 12 persons on a public street of said city without having paid the license tax of \$50.00 required by Ordinance No. C-4 of said city. Petition was filed in the Supreme Court for writ of habeas corpus which petition was denied January 16, 1918. Reported in 75 Fla. —, 77 So. 869.

Mose Simmons, ex parte:

A petition for habeas corpus was presented to the Supreme Court alleging in effect that Simmons was convicted of grand larceny at the October Term, 1906, of the Criminal Court of Record of Duval County, and sentenced to 15 years imprisonment in the State Prison to begin "after the expiration of sentence in case No. 159 of this Term;" that previously at the same term of the court one Mose Simmons was in case No. 159 convicted of grand larceny and sentenced to one day's imprisonment in the State Prison "after the expiration of the sentence in Case No. 158 of this Term;" that in case No. 158 of said term one Mose Simmons was convicted of petit larceny and sentenced to one day in the county jail; that petitioner has served ten years of said sentence; that further detention is illegal, etc. A writ of habeas corpus was issued by reason of the provision of Section 3298, G. S., and petitioner remanded to custody of Commissioner of Agriculture, with directions that petitioner be delivered to the Sheriff of Duval County, to be taken before the Criminal Court of Record for a proper sentence, if any should be imposed. Reported in 73 Fla. 998, 75 So. 542.

Nicholas Steyne v. W. H. Dowling, Sheriff:

Nicholas Steyne was convicted in the Criminal Court of Record of Duval County of having carnal intercourse with an unmarried female under the age of eighteen years. Petitioner sued out writ of habeas corpus in the Court below seeking his release on the ground that the law under which he was tried, Sec. 6947, Acts of 1915, was unconstitutional and void. The court admitted such Act unconstitutional but ruled that the information and conviction were sustained by Sec. 3521, G. S., and re-

manded petitioner to the custody of the Sheriff, subject to the previous conviction. From the order remanding petitioner brings writ of error which was dismissed December 11, 1917, on motion of Attorney General on the ground that prisoner had escaped. Reported in 74 Fla. —, 77 So. 1007.

R. W. Turner, et al., ex parte:

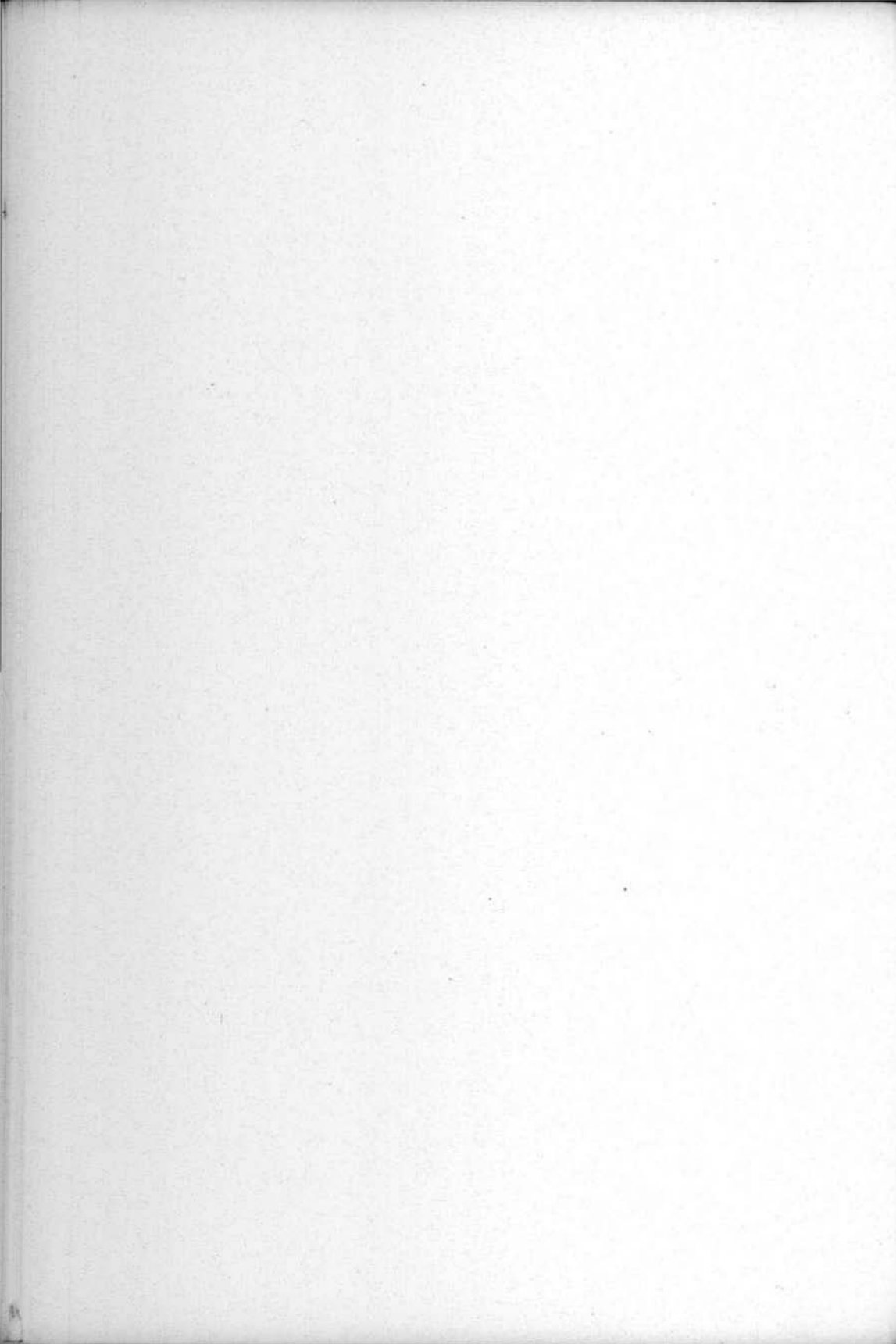
On January 9, 1917, Judge M. F. Horne of the Third Judicial Circuit, issued a rule against petitioners and other members of the Board of County Commissioners of Columbia County, Florida, for contempt. Upon a hearing on January 11, 1917, it was adjudged that said petitioners were in contempt of court, and that each of them might purge themselves of such by each paying a fine of \$50.00 and one-fourth of the costs of said proceedings, etc., whereupon petitioners obtained a writ of habeas corpus to test the validity of their conviction. Petitioners discharged February 14, 1917. Reported in 73 Fla. 360, 74 So. 314.

State of Florida Ex Rel J. L. Paxton, v. W. D. Moran, Sheriff, et al.:

J. L. Paxton was arrested by the Sheriff of Dade County on a warrant issuing out of the County Judge's office of Taylor County, charging him with the crime of embezzlement, and upon hearing was discharged. He was again arrested on the same warrant, writ of habeas corpus was granted and upon the hearing Judge Branning remanded the prisoner to the custody of the Sheriff of Taylor County. Upon writ of error judgment was affirmed November 19, 1918.

Simon Wilson, ex parte:

Simon Wilson was on May 28, 1917, tried and convicted of engaging in the sale of intoxicating liquors in precinct No. 1 of Marion County, which county had voted against such sales, whereupon Wilson made application to the Supreme Court and obtained a writ of habeas corpus to test the validity of his conviction. Writ was dismissed July 14, 1917, and prisoner remanded. Reported in 74 Fla. 91, 76 So. 341.



CRIMINAL CASES

IN WHICH OPINIONS WERE FILED BY THE
SUPREME COURT DURING THE YEARS
1917 AND 1918.

This Office Representing the State in Each Case.

JANUARY TERM, 1917.

M. L. Anderson v. State:

M. L. Anderson was convicted in the Circuit Court of Lafayette County of unlawfully withholding from his wife means of support, Judge Mallory F. Horne presiding. Writ of error was dismissed upon motion of Attorney General January 25, 1917. Reported in 73 Fla. 86, 74 So. 6.

J. G. Ciprian v. State:

J. G. Ciprian was convicted in the Circuit Court of Jackson County of the statutory offense of obtaining property under false pretense, Judge Cephas L. Wilson presiding. Upon writ of error judgment was affirmed April 6, 1917. Reported in 73 Fla. 858, 74 So. 980.

Sylvia Cross v. State:

Sylvia Cross was convicted in the Circuit Court of Pinellas County of assault with intent to murder in the second degree, Judge O. K. Reaves presiding. Upon writ of error judgment was affirmed March 1, 1917. Reported in 73 Fla. 531, 74 So. 593.

D. B. Herndon v. State:

D. B. Herndon was convicted in the Circuit Court of

Madison County of manslaughter, Judge D. J. Jones presiding. Upon writ of error judgment was affirmed February 24, 1917. Reported in 73 Fla. 451, 74 So. 511.

Nathan Howard v. State:

Nathan Howard was convicted in the Circuit Court of Columbia County of an aggravated assault, Judge M. F. Horne presiding. Upon writ of error judgment was affirmed March 3, 1917. Reported in 73 Fla. 694, 74 So. 882.

George Huntley, Jr., v. State:

George Huntley, Jr., was convicted in the Circuit Court of Franklin County of assault with intent to rape, Judge E. C. Love presiding. Upon writ of error judgment was reversed April 1, 1917. Reported in 73 Fla. 800, 75 So. 611.

W. B. Jarvis v. State:

W. B. Jarvis was convicted in the Circuit Court of Jackson County of perjury, Judge Cephas L. Wilson presiding. Upon writ of error judgment was affirmed March 13, 1917. Reported in 73 Fla. 635, 74 So. 794.

W. B. Jarvis v. State:

W. B. Jarvis was convicted in the Circuit Court of Jackson County of grand larceny, Judge Cephas L. Wilson presiding. Upon writ of error judgment was affirmed March 14, 1917. Reported in 73 Fla. 652, 74 So. 796.

Chas. B. Kersey v. State:

Charles B. Kersey was convicted in the Circuit Court of St. Lucie County of murder in the second degree, Judge

Jas. W. Perkins presiding. Upon writ of error judgment was affirmed April 5, 1917. Reported in 73 Fla. 832, 74 So. 983.

Jas. Mack v. State:

Jas. Mack was convicted in the Circuit Court of Duval County of rape, Judge Geo. Couper Gibbs presiding. Upon writ of error judgment was affirmed February 24, 1917. Reported in 73 Fla. 476, 74 So. 522.

Eddie Newborn v. State:

Eddie Newborn was convicted in the Circuit Court of Leon County of an assault with a deadly weapon with intent to commit manslaughter, Judge E. C. Love presiding. Upon writ of error judgment was reversed May 14, 1917. Reported in 73 Fla. 1064, 75 So. 581.

James Royals v. State:

James Royals was convicted in the Criminal Court of Record of Duval County of an assault with intent to rape, Judge Jas. M. Peeler presiding. Upon writ of error judgment was reversed April 20, 1917. Reported in 73 Fla. 897, 75 So. 199.

E. J. Tedder v. State:

E. J. Tedder was convicted in the Circuit Court of Taylor County of grand larceny, Judge M. F. Horne presiding. Upon writ of error judgment was reversed April 6, 1917. Reported in 73 Fla. 861, 75 So. 783.

Bertha Thomas v. State:

Bertha Thomas was convicted in the Circuit Court of Leon County of being an accessory before the fact to the commission of manslaughter, Judge E. C. Love presiding.

Upon writ of error judgment was affirmed January 26, 1917. Reported in 73 Fla. 115, 74 So. 1.

Cassie Williams v. State:

Cassie Williams was convicted in the Circuit Court of Pinellas County of manslaughter, Judge O. K. Reaves presiding. Upon writ of error judgment was affirmed June 7, 1917. Reported in 73 Fla. 1198, 75 So. 785.

Tom Woff v. State:

Tom Woff was convicted in the Circuit Court of Hernando County of willfully and maliciously administering poison to cattle, Judge O. K. Reaves presiding. Upon writ of error judgment was reversed January 8, 1917. Reported in 72 Fla. 572, 73 So. 740.

JUNE TERM 1917.

Lucy Boyington v. State:

Lucy Boyington was convicted in the Circuit Court of Bay County of manslaughter, Judge D. J. Jones presiding. Upon writ of error judgment was reversed and new trial granted December 2, 1917. Reported in 74 Fla. 258, 76 So. 774.

E. L. Childers v. State:

E. L. Childers was convicted in the Circuit Court of Madison County of murder in the first degree, Judge Mallory F. Horne presiding. Upon writ of error judgment was affirmed November 13, 1917. Reported in 74 Fla. 288, 77 So. 99.

Silas Chisolm v. State:

Silas Chisolm was convicted in the Circuit Court of Citrus County of murder in the first degree, Judge W. S. Bullock presiding. Upon writ of error judgment was reversed July 2, 1917. Reported in 74 Fla. 50, 76 So. 329.

Alexander Davis v. State:

Alexander Davis was convicted in the Criminal Court of Record of Dual County of grand larceny, Judge Jas. M. Peeler presiding. Upon writ of error judgment was reversed October 17, 1917. Reported in 74 Fla. 100, 76 So. 675.

G. W. Ellis v. State:

G. W. Ellis was convicted in the Circuit Court of Jackson County of disposing of mortgaged property, Judge Cephas L. Wilson presiding. Upon writ of error judgment was affirmed October 26, 1917. Reported in 74 Fla. 215, 76 So. 698.

N. P. Hatcher v. State:

N. P. Hatcher was convicted in the Criminal Court of Record of Orange County of receiving stolen goods, Judge T. P. Warlow presiding. Upon writ of error judgment was affirmed October 19, 1917. Reported in 74 Fla. 112, 76 So. 694.

Jim Hicks v. State:

Jim Hicks was convicted in the Circuit Court of Pasco County of murder in the second degree, Judge O. K. Reaves presiding. Writ of error was dismissed upon motion of Attorney General October 30, 1917. Reported in 74 Fla. —, 77 So. 1006.

N. E. P. Jackson v. State:

N. E. P. Jackson was convicted in the Criminal Court of Record of Duval County of a criminal offence, Judge J. M. Peeler presiding. Writ of error was dismissed October 16, 1917.

C. C. McKinney v. State:

C. C. McKinney was convicted in the Circuit Court of Dade County of murder in the first degree, Judge H. Pierre Branning presiding. Upon writ of error judgment was affirmed July 2, 1917. Reported in 74 Fla. 25, 76 So. 333.

D. K. Middleton v. State:

D. K. Middleton was convicted in the Circuit Court of Bay County of embezzlement of county funds, Judge D. J. Jones presiding. Upon writ of error judgment was reversed October 30, 1917. Reported in 74 Fla. 234, 76 So. 785.

Albert Morasso v. State:

Albert Morasso was convicted in the Court of Record of Escambia County of the second offense of carrying on the business of a liquor dealer, without having first obtained the license required by law, Judge C. M. Jones presiding. Upon writ of error judgment was affirmed November 2, 1917. Reported in 74 Fla. 269, 76 So. 777.

Pensacola Lodge No. 497, B. P. O. E., v. State:

The Pensacola Lodge No. 497, Benevolent & Protective Order of Elks, on its plea of nolo contendere to a charge

of a violation of a statute, was fined by the Court of Record of Escambia County, Judge C. M. Jones presiding. Writ of error was dismissed December 13, 1917. Reported in 74 Fla. 498, 77 So. 613.

W. R. Rhodes v. State:

W. R. Rhodes was convicted in the Criminal Court of Record of Hillsborough County of assault with intent to murder in the second degree, Judge Lee J. Gibson presiding. Upon writ of error judgment was affirmed October 29, 1917. Reported in 74 Fla. 230, 76 So. 776.

John C. Smith v. State:

John C. Smith was convicted in the Circuit Court of Bay County of obtaining money under false pretenses, Judge D. J. Jones presiding. Upon writ of error judgment was affirmed December 20, 1917. Reported in 74 Fla. —, 77 So. 274.

S. B. Smith v. State:

S. B. Smith was convicted in the Circuit Court of Alachua County of the larceny of a cow, Judge J. T. Wills presiding. Upon a writ of error judgment was reversed July 13, 1917. Reported in 74 Fla. —, 76 So. 774.

H. Fred Smith v. State:

H. Fred Smith was convicted in the Circuit Court of Hamilton County of embezzlement, Judge M. F. Horne presiding. Upon writ of error judgment was reversed July 2, 1917. Reported in 74 Fla. —, 76 So. 334.

Henry Thomas v. State:

Henry Thomas was convicted in the Criminal Court of Record of Orange County of the offense of selling intoxi-

cating liquors, Judge T. Picton Warlow presiding. Upon writ of error judgment was reversed October 26, 1917. Reported in 74 Fla. 200, 76 So. 780.

JANUARY TERM 1918.

Carlos Alvarez v. State:

Carlos Alvarez was convicted in the Criminal Court of Record of Hillsborough County for receiving stolen property, Judge W. S. Graham presiding. Upon writ of error judgment was reversed February 19, 1918. Reported in 75 Fla. —, 78 So. 272.

E. J. Fudge v. State:

E. J. Fudge was convicted in the Circuit Court of Escambia County of murder in the first degree, Judge A. G. Campbell presiding. Upon writ of error judgment was reversed March 9, 1918. Reported in 75 Fla. —, 78 So. 510.

John Goff v. State:

John Goff was convicted in the Circuit Court of Calhoun County of murder in the second degree, Judge C. L. Wilson presiding. Upon writ of error judgment was affirmed January 18, 1918. Reported in 75 Fla. —, 77 So. 877.

W. J. Grice and Mattie Hodge v. State:

W. J. Grice and Mattie Hodge were convicted in the Circuit Court of St. Lucie County of living in an open state of adultery, Judge E. B. Donnell presiding. Upon writ of error judgment was reversed May 25, 1918. Reported in 75 Fla. —, 78 So. 984.

Dunk Harris v. State:

Dunk Harris was convicted in the Circuit Court of Baker County of murder in the second degree, Judge J. T. Willis presiding. Upon writ of error case remanded for proper judgment April 8, 1918. Reported in 75 Fla. —, 78 So. 526.

D. P. Henderson v. State:

D. P. Henderson was convicted in the Circuit Court of Jackson County of embezzlement, Judge C. L. Wilson presiding. Upon writ of error judgment was affirmed March 20, 1918. Reported in 75 Fla. —, 78 So. 427.

Claude C. Hicks v. State:

Claude C. Hicks was convicted in the Circuit Court of Duval County of murder in the second degree, Judge Couper Gibbs presiding. Upon writ of error judgment was affirmed February 26, 1918. Reported in 75 Fla. —, 78 So. 270.

Frank Jones v. State:

Frank Jones was convicted in the Circuit Court of Hamilton County of murder in the second degree, Judge C. L. Wilson presiding. Upon writ of error judgment was affirmed April 9, 1918. Reported in 75 Fla. —, 78 So. 529.

Greely McCoy v. State:

Greely McCoy was convicted in the Circuit Court of Jackson County of larceny, Judge C. L. Wilson presiding. Upon writ of error judgment was affirmed April 20, 1918. Reported in 75 Fla. —, 78 So. 168.

E. B. Messer v. State:

E. B. Messer was convicted in the Circuit Court of Jackson County of murder in the second degree, Judge C. L. Wilson presiding. Upon writ of error judgment was affirmed April 25, 1918. Reported in 75 Fla. —, 78 So. 680.

S. S. Milligan v. State:

S. S. Milligan was convicted in the Circuit Court of Columbia County of larceny, Judge M. F. Horne presiding. Upon writ of error judgment was affirmed March 29, 1918. Reported in 75 Fla. —, 78 So. 535.

Dave Miller v. State:

Dave Miller was convicted in the Circuit Court of DeSoto County of murder, Judge John S. Edwards presiding. Upon writ of error judgment was reversed January 23, 1918. Reported in 75 Fla. —, 77 So. 699.

R. C. Murdock v. State:

This suit was appealed from the Criminal Court of Duval County, but appeal was abandoned March 17, 1918, and Murdock is now serving sentence.

J. P. Parker v. State:

J. P. Parker was convicted in the Circuit Court of Alachua County of the larceny of a cow, Judge Jas. T. Willis presiding. Upon writ of error judgment was affirmed May 22, 1918. Reported in 75 Fla. —, 78 So. 980.

Pensacola Lodge No. 497, B. P. O. E., v. State:

Pensacola Lodge No. 497, B. P. O. E. was convicted in the Court of Record of Escambia County for the viola-

tion of Chapter 7287, Laws of Florida, Acts of 1917, relative to the sale of intoxicating liquors, Judge C. M. Jones presiding. Upon writ of error judgment was affirmed March 9, 1918, upon the principles announced in the case of Van Pelt, Sheriff v. Hilliard. Reported in 75 Fla. —, 78 So. 699.

Erman Presley v. State:

Erman Presley was convicted in the Circuit Court of Escambia County of murder in the first degree, Judge A. G. Campbell presiding. Upon writ of error judgment was reversed March 8, 1918. Reported in 75 Fla. —, 78 So. 532.

Charlie Pruitt v. State:

Charlie Pruitt was convicted in the Circuit Court of Pinellas County of obtaining money under false pretenses, Judge O. K. Reaves presiding. Upon writ of error judgment was reversed March 19, 1918. Reported in 75 Fla. —, 78 So. 425.

Walter Rivers v. State:

Walter Rivers was convicted in the Criminal Court of Duval County of murder in the second degree, Judge Geo. Couper Gibbs presiding. Upon writ of error judgment was affirmed March 7, 1918. Reported in 75 Fla. 78 So. 343.

W. J. Sanford v. State:

W. J. Sanford was convicted in the Circuit Court of Duval County of rape, Judge Geo. Couper Gibbs presiding. Upon writ of error judgment was reversed March 7, 1918. Reported in 75 Fla. —, 78 So. 340.

Erin Settles v. State:

Erin Settles was convicted in the Circuit Court of Okaloosa County of perjury, Judge A. G. Campbell presiding. Upon writ of error judgment was affirmed February 21, 1918. Reported in 75 Fla. —, 78 So. 287.

J. J. Smith v. State:

J. J. Smith was convicted in the Circuit Court of Jackson County of a violation of the local option law, Judge C. L. Wilson presiding. Upon writ of error judgment was reversed March 2, 1918. Reported in 75 Fla. —, 78 So. 530.

Percy Treadgill v. State:

Percy Treadgill was convicted in the Criminal Court of Record of Dade County of forgery, Judge James T. Sanders presiding. Upon writ of error judgment was reversed February 7, 1918. Reported in 75 Fla. —, 77 So. 880.

Oliver Ward v. State:

Oliver Ward was convicted in the Circuit Court of LaFayette County of manslaughter, Judge M. F. Horne presiding. Upon writ of error judgment was affirmed May 30, 1918. Reported in 75 Fla. —, 79 So. 799.

John Wells v. State:

John Wells was convicted in the Criminal Court of Record of Dade County of receiving stolen goods, Judge James T. Sanders presiding. Upon writ of error judgment was affirmed February 5, 1918. Reported in 75 Fla. —, 77 So. 879.

Mary Wilkins v. State:

Mary Wilkins was convicted in the Circuit Court of Bay County of selling intoxicating liquors in violation of law, Judge D. J. Jones presiding. Upon writ of error judgment was affirmed March 29, 1918. Reported in 75 Fla. —, 78 So. 523.

JUNE TERM 1918.

Geo. E. Antone, Jasper Antone, and Dave Goldsby v. State:

Geo. E. Antone and Jasper Antone were convicted in the Court of Record of Escambia County of larceny, Judge C. M. Jones presiding. Upon writ of error judgment was reversed as to Geo. E. Antone, and affirmed as to Jasper Antone August 10, 1918.

H. Clay Bailey v. State:

H. Clay Bailey was convicted in the Criminal Court of Record of Duval County of receiving stolen goods. Judge J. M. Peeler presiding. Upon writ of error judgment was affirmed July 9, 1918.

Ned Bailey v. State:

Ned Bailey was convicted in the Criminal Court of Record of Duval County of assault with intent to commit manslaughter, Judge Jas. M. Peeler presiding. Upon writ of error judgment was reversed August 10, 1918.

Ollie Bailey v. State:

Ollie Bailey was convicted in the Circuit Court of St. Lucie County of rape, Judge E. B. Donnell presiding. Upon writ of error judgment was reversed August 9, 1918.

Milton Baker, Charlotte Baker and Silas Oats v. State:

Plaintiffs were convicted in the Circuit Court of Walton County of an assault with intent to commit murder in the second degree, Judge A. G. Campbell presiding. Upon writ of error judgment was affirmed October 2, 1918.

C. C. Baxter v. State:

C. C. Baxter was convicted in the Court of Record of Escambia County for violating Chapter 6860, Laws of Florida, and brought writ of error to the Supreme Court, but before writ was perfected Baxter received a conditional pardon on August 29, 1918.

Will and Robert Blackwell v. State:

Will and Robert Blackwell were convicted in the Circuit Court of Okaloosa County of murder in the first degree, Judge A. G. Campbell presiding. Upon writ of error judgment was reversed July 27, 1918.

John L. Branch v. State:

John L. Branch was convicted in the Criminal Court of Record of Hillsborough County of embezzlement, Judge W. S. Graham presiding. Upon writ of error judgment was affirmed December 19, 1918.

William L. Clifton v. State:

William L. Clifton was convicted in the Circuit Court of Polk County of obtaining money under false pretenses, Judge John S. Edwards presiding. Upon writ of error judgment was reversed August 12, 1918.

James E. Crane v. State:

James E. Crane was convicted in the Criminal Court of Hillsborough County of embezzlement, Judge W. S. Robles presiding. Upon writ of error judgment was affirmed August 12, 1918.

T. T. Dallas v. State:

T. T. Dallas was convicted in the Criminal Court of Record of Hillsborough County of a criminal offense, Judge W. S. Graham presiding. Upon writ of error judgment was reversed August 15, 1918.

John C. Davis v. State:

John C. Davis was convicted in the Circuit Court of Taylor County of bigamy, Judge M. F. Horne presiding. Upon writ of error judgment was affirmed November 15, 1918.

Ruben Davis and Rachel Smith v. State:

Ruben Davis and Rachel Smith were convicted in the Circuit Court of Seminole County of murder in the first degree, Judge Jas. W. Perkins presiding. Upon writ of error judgment was reversed August 6, 1918.

John Gadsden v. State:

John Gadsden was convicted in the Circuit Court of Oscela County of assault with intent to rape, Judge James W. Perkins presiding. Writ of error was dismissed December 13, 1918.

Simon C. Green v. State:

Simon C. Green was convicted in the Criminal Court of Record of Dade County of obtaining money by false

pretenses, Judge James T. Sanders presiding. Upon writ of error judgment was reversed August 15, 1918.

W. J. McNeal v. State:

W. J. McNeal was convicted in the Circuit Court of Holmes County of deserting his wife and child, Judge D. J. Jones presiding. Upon writ of error judgment was affirmed August 8, 1918.

Ambrosia Martinez v. State:

Ambrosio Martinez was convicted in the Criminal Court of Record of Hillsborough County of burning certain property, Judge W. S. Graham presiding. Upon writ of error judgment was affirmed August 2, 1918.

Malcolm Miller and Geoffery Barron v. State:

Malcolm Miller and Geoffery Barron were convicted in the Circuit Court of Okaloosa County of breaking and entering Judge A. G. Campbell presiding. Upon a writ of error judgment was affirmed December 5, 1918.

Rye Moody and Hampton Herring v. State:

Rye Moody and Hampton Herring were convicted in the Circuit Court of Lafayette County of larceny, Judge M. F. Horne presiding. Upon writ of error judgment was reversed June 18, 1918.

Madison Moore v. State:

Madison Moore was convicted in the Circuit Court of Dade County of a criminal offense; Judge H. Pierre Branning presiding. Upon motion of Attorney General case was dismissed December 17, 1918.

William Ponder v. State:

William Ponder was convicted in the Circuit Court of Leon County for permitting persons to play games for money, Judge E. C. Love presiding. Upon writ of error judgment was affirmed December 12, 1918.

Daniel Renfroe v. State:

Daniel Renfroe was convicted in the Circuit Court of Santa Rosa County of killing sheep, Judge A. G. Campbell presiding. Upon writ of error judgment was reversed October 26, 1918.

W. C. Rutherford v. State:

W. C. Rutherford was convicted in the Court of Record of Escambia County for soliciting membership for the Western Funeral Benefit Association, a fraternal benefit association which was not authorized to do business in this State, etc., Judge C. M. Jones presiding. Upon writ of error judgment was affirmed August 10, 1918.

Kirby L. Sandlin v. State:

Kirby L. Sandlin was convicted in the Circuit Court of Hamilton County of aggravated assault, Judge C. L. Wilson presiding. Upon writ of error judgment was affirmed August 15, 1918.

Will Simmons v. State:

Will Simmons was convicted in the Circuit Court of Dade County of a criminal offense, Judge H. Pierre Branning presiding. Upon motion of Attorney General case was dismissed December 17, 1918.

R. L. Stinson v. State:

R. L. Stinson was convicted in the Circuit Court of Columbia County for murder in the second degree, Judge M. F. Horne presiding. Upon writ of error judgment was affirmed September 8, 1918.

George Street v. State:

George Street was convicted in the Criminal Court of Record of Orange County of being a common liquor dealer, Judge T. P. Warlow presiding. Upon writ of error judgment was affirmed August 9, 1918.

John Swilley v. State:

John Swilley was convicted in the Circuit Court of Hamilton County of grand larceny, Judge M. F. Horne presiding. Upon writ of error judgment was affirmed December 13, 1918.

Tobe Wallace v. State:

Tobe Wallace was convicted in the Circuit Court of Manatee County of larceny of a calf, Judge C. L. Wilson presiding. Upon writ of error judgment was affirmed August 5, 1918.

Jessie J. Wetherford v. State:

Jessie J. Wetherford was convicted in the Criminal Court of Record of Hillsborough County of failing to support minor child, Judge W. S. Graham presiding. Upon writ of error judgment was reversed August 15, 1918.

William Weatherford v. State:

William Weatherford was convicted in the Criminal Court of Record of Monroe County of a statutory felony. Judge W. Hunt Harris presiding. Upon writ of error judgment was affirmed August 9, 1918.

Harvey S. Witherspoon v. State:

Harvey S. Witherspoon was convicted in the Criminal Court of Dade County of murder in the second degree. Upon writ of error judgment was affirmed November 13, 1918.

Osborn Wolfe v. State:

Osborn Wolfe was convicted in the Criminal Court of Record of Dade County of obtaining money under false pretenses, Judge James T. Sanders presiding. Upon writ of error judgment was reversed August 2, 1918.

TABULATED REPORT OF CRIMINAL CASES IN WHICH OPINIONS WERE FILED BY THE
SUPREME COURT DURING THE YEARS 1917 AND 1918 DURING ITS JANUARY
TERM 1917, AND REPORTED IN SEVENTY-THREE FLORIDA REPORT.

Name of Offender.	Character of Offense.	County.	Court.	Disposition
Anderson, M. L.....	Withholding support from wife.	LaFayette	Circuit	Dismissed
Ciprian, J. G.....	Obtaining property under false pretenses	Jackson	Circuit	Affirmed
Cross, Sylvia	Assault with inten to murder...	Pinellas	Circuit	Affirmed
Horndon, D. B.....	Manslaughter	Madison	Circuit	Affirmed
Howard, Nathan	Aggravated assault	Columbia	Circuit	Affirmed
Huntley, Jr., Geo.....	Assault with inten to rape	Franklin	Circuit	Reversed
Jarvis, W. B.....	Perjury	Jackson	Circuit	Affirmed
Jarvis, W. B.....	Grand larceny	Jackson	Circuit	Affirmed
Kersey, Chas. B.....	Murder 2nd degree.....	St. Lucie	Circuit	Affirmed
Mack, James	Rape	Duval	Circuit	Affirmed
Newborn, Eddie	Manslaughter	Leon	Circuit	Reversed
Royals, James	Assault with intent to rope....	Duval	Criminal	Reversed
Tedder, E. J.	Grand larceny	Taylor	Circuit	Reversed
Thomas, Bertha	Accessory before the fact.....	Leon	Circuit	Affirmed
Williams, Cassie	Manslaughter	Pinellas	Circuit	Affirmed
Woff, Tom	Poisoning cattle	Hernando	Circuit	Reversed

CASES DISPOSED OF DURING JUNE TERM 1917, AND REPORTED IN SEVENTY-FOURTH
FLORIDA REPORT.

Name of Offender.	Character of Offense.	County.	Court.	Disposition
Boyington, Lucy	Manslaughter	Bay	Circuit	Reversed
Childers, E. L.	Murder 1st degree.....	Madison	Circuit	Affirmed
Chisolm, Silas	Murder 1st degree.....	Citrus	Circuit	Reversed
Davis, Alexander.....	Grand larceny	Duval	Criminal	Reversed
Ellis, G. W.	Disposing of mortgaged property	Jackson	Circuit	Affirmed
Hatcher, N. P.....	Receiving stolen goods.....	Orange	Criminal	Affirmed
Hicks, Jim	Murder 2nd degree.....	Pasco	Circuit	Dismissed
Jackson, N. E. P.....		Duval	Criminal	Dismissed
McKinney, C. C.....	Murder 1st degree.....	Dade	Circuit	Affirmed
Middleton, D. K.....	Embezzlement	Bay	Circuit	Reversed
Morasso, Albert	Second offense carrying on busi- ness liquor dealer.....	Escambia	Ct. of Rec.	Affirmed
Pensacola Lodge No. 497, B. P. O. E.....	Violating Davis Law 1917.....	Escambia	Ct. of Rec.	Dismissed
Rhodes, W. R.	Assault with intent to murder..	Hillsborough	Criminal	Affirmed
Smith, John C.....	Obtaining money under false pretenses	Bay	Circuit	Affirmed
Smith, S. B.....	Larceny of a cow.....	Alachua	Circuit	Reversed
Smith, Fred H.	Embezzlement	Hamilton	Circuit	Reversed
Thomas, Henry	Selling liquor 2nd offense.....	Orange	Criminal	Reversed

CASES DISPOSED OF DURING JANUARY TERM 1918, AND REPORTED IN SEVENTY-FIVE FLORIDA REPORT.

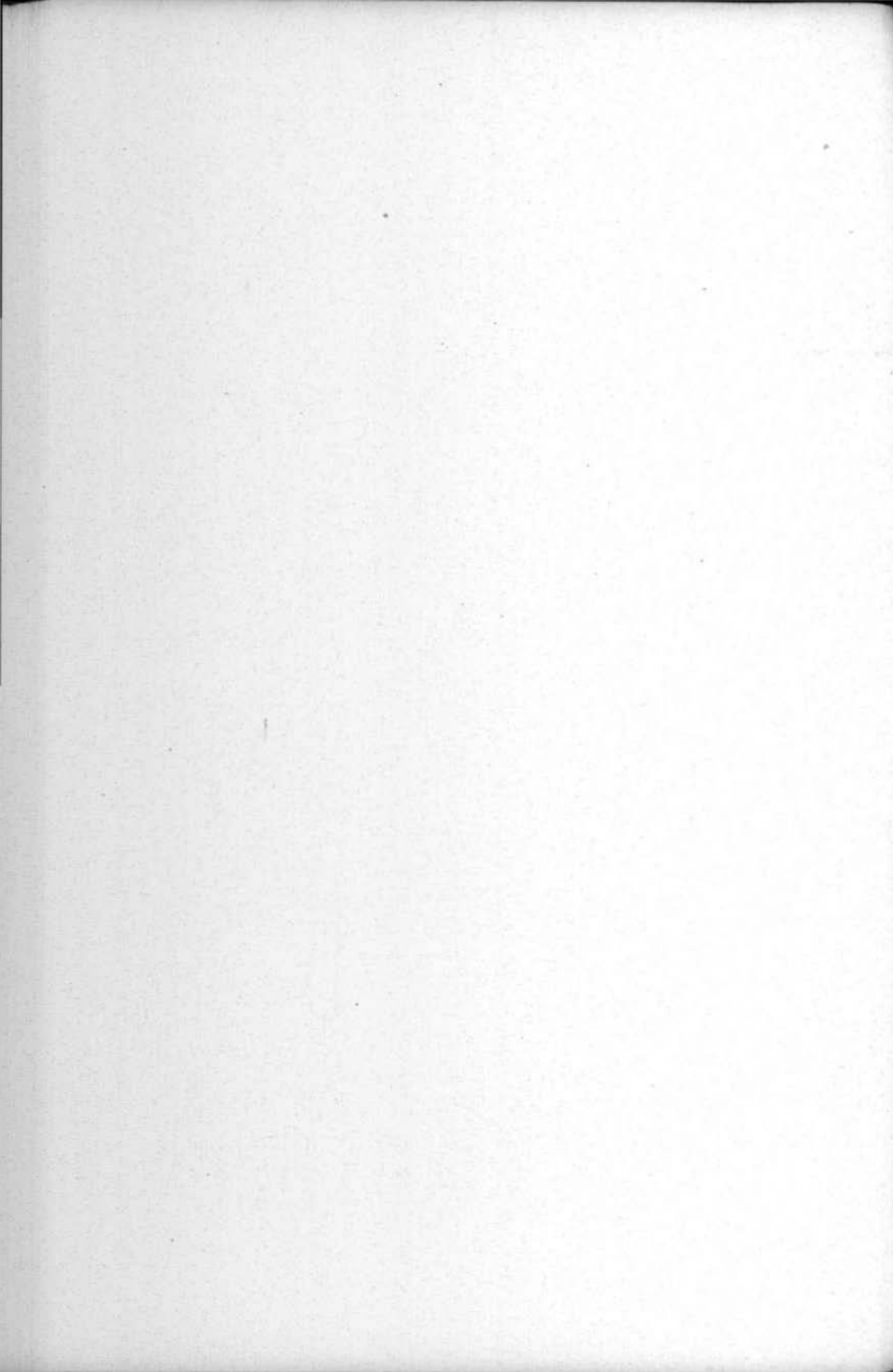
Name of Offender.	Character of Offense.	County.	Court.	Disposition
Alvarez, Carlos	Receiving stolen property.....	Hillsborough	Criminal	Reversed
Fudge, E. J.	Murder 1st degree.....	Escambia	Circuit	Reversed
Goff, John	Murder 2nd degree	Calhoun	Circuit	Affirmed
Grice, W. J., and Mattie Hodge	Adultery	St. Lucie	Circuit	Reversed
Harris, Dunk	Murder 2nd degree.....	Baker	Circuit	Remanded
Henderson, D. P.....	Embezzlement	Jackson	Circuit	Affirmed
Hicks, Claude C.	Murder 2nd degree.....	Duval	Circuit	Affirmed
Jones, Frank	Murder 2nd degree.....	Hamilton	Circuit	Affirmed
McCoy, Greely	Larceny	Jackson	Circuit	Affirmed
Messer, E. B.....	Murder 2nd degree.....	Jackson	Circuit	Affirmed
Milligan, S. S.....	Larceny	Columbia	Circuit	Affirmed
Miller, Dave	Murder	DeSoto	Circuit	Reversed
Murdock, R. C.....		Duval	Criminal	Appeal abandoned
Parker, J. P.....	Larceny	Alachua	Circuit	Affirmed
Pensacola Lodge No. 497, B. P. O. E.....	Violating Chapter 7287 Laws of Florida 1917	Escambia	Ct. of Rec.	Affirmed

Presley, Erman	Murder 1st degree.....	Escambia	Circuit	Reversed
Pruit, Charlie	Obtaining money under false pre- tenses	Pinellas	Circuit	Reversed
Rivers, Walter	Murder 2nd degree.....	Duval	Criminal	Affirmed
Sanford, W. J.....	Rape	Duval	Circuit	Reversed
Settler, Erin	Perjury	Okaloosa	Circuit	Affirmed
Smith, J. J.....	Violating Local Option Law....	Jackson	Circuit	Reversed
Threadgill, Percy	Forgery	Dade	Criminal	Reversed
Ward, Oliver	Manslaughter	LaFayette	Circuit	Affirmed
Wells, John	Receiving stolen goods.....	Dade	Criminal	Affirmed
Wilkins, Mary	Selling intoxicating liquors in violation of law.....	Bay	Circuit	Affirmed

CASES DISPOSED OF DURING JUNE TERM 1918, AND REPORTED IN SEVENTY-SIX
FLORIDA REPORT.

Name of Offender.	Character of Offense.	County.	Court.	Disposition
Antone, Geo. E., Antone, Jasper, and Gildsby, Dave	Larceny	Escambia	Ct. of Rec.	Affirmed
Bailey, H. Clay	Receiving stolen goods.....	Duval	Criminal	Affirmed
Bailey, Ned	Assault with intent to commit manslaughter	Duval	Criminal	Reversed
Bailey, Ollie	Rape	St. Lucie	Circuit	Reversed
Barker, Milton	Assault with intent to commit murder 2nd degree.....	Walton	Circuit	Affirmed
Baxter, C. C.	Violating Chap. 6860.....	Escambia	Ct. of Rec.	Pardoned
Blackwell, Will and Robert.	Murder 1st degree.....	Okaloosa	Circuit	Reversed
Branch, John L.....	Embezzlement	Hillsborough	Criminal	Affirmed
Clifton, William L.....	Obtaining money under false pretenses	Polk	Circuit	Reversed
Crane, James E.....	Embezzlement	Hillsborough	Criminal	Affirmed
Dallas, T. T.....	Criminal offense	Hillsborough	Criminal	Reversed
Davis, John C.....	Bigamy	Taylor	Circuit	Affirmed
Davis, Ruben, and Smith, Rachel ..	Murder 1st degree.....	Seminole	Circuit	Reversed
Gadsden, John	Assault with intent to rape....	Osceola	Circuit	Dismissed

Green, Simon C.....	Obtaining money by false pre- tenses	Dade	Criminal	Reversed
McNeal, W. J.	Desertion	Holmes	Circuit	Affirmed
Martinez, Ambrosia	Burning property	Hillsborough	Criminal	Affirmed
Miller, Malcolm	Breaking and entering.....	Okaloosa	Circuit	Affirmed
Moody, Rye, and Herring, Hampton	Larceny	LaFayette	Circuit	Reversed
Moore, Madison	Criminal offense	Dade	Circuit	Dismissed
Ponder, William	Permitting persons to play game for money	Leon	Circuit	Affirmed
Renfroe, Daniel	Killing sheep	Santa Rosa	Circuit	Reversed
Rutherford, W. C.....	Soliciting membership for an as- sociation	Escambia	Ct. of Rec.	Affirmed
Sandlin, Kirby L.....	Aggravated assault	Hamilton	Circuit	Affirmed
Simmons, Will	Criminal offense	Dade	Circuit	Dismissed
Stinson, R. L.	Murder 2nd degree.....	Columbia	Circuit	Affirmed
Street, George	Common liquor dealer.....	Orange	Criminal	Affirmed
Swilley, John	Grand larceny	Hamilton	Circuit	Affirmed
Wallace, Tobe	Larceny	Manatee	Circuit	Affirmed
Wetherford, Jessie J.....	Failure to suppure minor child.	Hillsborough	Criminal	Reversed
Weatherford, William	Keeping gambling table.....	Monroe	Criminal	Affirmed
Witherspoon, Harvey S.....	Murder 2nd degree	Dade	Criminal	Affirmed
Wolfe, Osborn	Obtaining money under false pretenses	Dade	Criminal	Reversed



OFFICIAL OPINIONS

FOR THE YEARS 1917 AND 1918.

Opinions to the Governor

OFFICE—VACATING BY REMOVING FROM DISTRICT.

Tallahassee, Fla., January 17, 1917.

*Honorable Sidney J. Catts, Governor,
Capitol.*

Dear Sir:—

Yours of the 15th instant has been received.

I note your inquiry as follows:

“Please find attached hereto letter from Mr. E. C. Welch of Cottondale in reference to Mr. L. J. Cumbaa who was recently elected Justice of Peace in District No. 15 of Jackson County. As you will see from this letter Mr. Cumbaa does not actually reside in this district.

“This office also has communication from the Clerk’s office of Jackson County giving the facts about the same as mentioned in the letter from Mr. Welch. Please advise whether or not Mr. Cumbaa is eligible to the office to which he was elected in District No. 15.”

It appears from the letter from Mr. Welch that the question involved is whether or not one who is not an inhabitant or resident of a justice of the peace district in a county in this State is eligible to the office of justice of the peace for such district.

By the fourth paragraph of Section 298 of the General Statutes of Florida it is provided that every office in this State shall be deemed vacant in cases where the incumbent ceases to be an *inhabitant* of the State, district, county, town or city for which he shall have been elected or appointed.

In this case it appears that Mr. Cumbaa's home is outside of the district in which he was elected and that he is in fact an inhabitant of another district.

In this situation he is, in my opinion, under the law, not eligible to the office, and the fact that his store and place of business are in the district does not change this result.

The correctness of this conclusion will be conceded, I think, when it is recalled that it is partially universally held that in the cities in this State where one's place of business may be in one justice of the peace district or election precinct and his home and residence in another he is an inhabitant or resident of the district or precinct in which his home is located.

Yours, very truly,

T. F. WEST,

Attorney General.

COUNTY FUNDS FOR MUNICIPAL PURPOSES.

Tallahassee, Fla., February 24, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

Yours of this date has been received.

I note your inquiry as follows:

"It is reported that the County Commissioners of Mon-

roe County have an organized Fire Company in the City of Key West that is maintained and paid for by the County of Monroe; the County Commissioners appropriating the moneys necessary for the maintenance of this Company.

"Kindly advise whether in your opinion the County Commissioners of that County have the authority under the law to appropriate money for this purpose.

"The report is that this Fire Company, while it is maintained by the County is actually used entirely for the protection of the property in the City of Key West."

There is, in my opinion, no authority for the appropriation and expenditure from the public funds of the County of Monroe of the amount necessary for the maintenance of the fire department or company of the City of Key West.

Respectfully submitted,

T. F. WEST,
Attorney General.

RECORD BOOKS—LOOSELEAF DISAPPROVED.

Tallahassee, Fla., March 10, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

Yours of the 5 instant has been received.

I note your inquiry and the letter of Sidney J. Jones, Esquire, of Jacksonville, relative to the legal authority of Clerks of the Circuit Court of the various counties of this State to use loose leaf record books for the recording

of deeds and mortgages which are required to be recorded in their respective offices.

There is no statute in this State regulating this matter and, therefore, it rests largely in the discretion of the recording officer.

I concur in the views expressed in your inquiry. that it would be much safer, as a practical matter, to have all permanent records of the counties made in permanently bound record books.

Respectfully submitted,

T. F. WEST,

Attorney General.

THEATRES—AUTHORITY TO BE OPEN ON SUNDAY.

Tallahassee, Fla., March 20, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:—

Yours of the 19 instant has been received.

I note copy of telegram from the pastors of the Methodist and Baptist Churches relative to the opening of theatres in the town of Daytona on Sunday and your request that I advise you as to the law on this subject.

Municipalities in this State are authorized and empowered to deal generally with this subject, and the town council or other governing body of the municipality from which this request comes may prohibit, by ordinance duly passed, the opening of theatres on Sundays.

Respectfully submitted,

T. F. WEST,

Attorney General.

NATIONAL GUARD—AUTHORITY TO APPOINT
OFFICERS OF.

Tallahassee, Fla., March 21, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:—

Yours of the 13 instant has been received.

I note your inquiry as follows:

“Enclosed please find two appointments made by Adjutant General Christian. I only send you these to know whether or not Adjutant General Christian suggests and naems all the appointments and then has me to endorse them or whether I have any right in helping to name the same. I care very little about these two appointments but it may involve something which would be pretty serious in case General Christian and myself did not agree, and I do not care to surrender any right that I have by doing things which once done would set a precedent. Let me know what you think about this matter and state the law in regard to what my rights are in the case.”

The statute on this subject is a paragraph of subdivision D of Section 5 of Chapter 5930, Acts of 1909, Laws of Florida (Section 672, Florida Compiled Laws), which reads as follows:

“The Adjutant General shall be appointed by the Governor, and the remaining officers of the Staff Corps and Departments shall be appointed by the Governor upon the recommendation of the Adjutant General in his capacity as Chief of Staff.”

This statute answers your inquiry and, while there may be some question of the validity and binding force of this

provision of the law, I assume that there is no particular desire to raise that question in this instance.

Respectfully submitted,

T. F. WEST,
Attorney General.

ROAMER—AUTHORITY OF GOVERNOR TO GIVE
BOAT TO FEDERAL GOVERNMENT.

Tallahassee, Fla., March 29, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:—

Yours of the 24 instant has been received.

I note your inquiry as follows:

"Enclosed please find letter from one of the Naval Committee at Key West, Florida. Kindly let me know your opinion as to whether I would have the right to give the Roamer to the United States. I do not wish to take this responsibility and I hope you will decide against it. It seems to me that we should have the opinion of the Legislature about it."

Replying thereto I will say that in my opinion, there is no legal authority for giving this boat, which is the property of the State, to the Federal Government, and before such action can be legally taken, it will be necessary for the Legislature to pass an act directing or authorizing that it be done.

Respectfully submitted,

T. F. WEST,
Attorney General.

FISH—AUTHORITY TO CATCH FROM CERTAIN LAKES.

Tallahassee, Fla., March 31, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:—

I acknowledge receipt of your verbal request of this date for an expression from this office upon the question of whether or not you have the power or authority to grant the request of a number of citizens of Brevard County relative to the taking of fish from certain lakes in said county.

This petition is in the following language:

"To his Excellency Sidney J. Catts, Governor of the State of Florida:

"We, the undersigned citizens of Brevard County, State of Florida, would respectfully represent unto your Excellency, that there is established in Brevard County, State of Florida, a Drainage District known and described as The Upper St. Johns Drainage District, which said District includes Lake Poinsett, Lake Winder and Lake Washington, that the drainage of the above lakes is to start on the first day of July, 1917, that in consequence of the drainage of said lakes there will be a great number of Fish which will be totally lost unless the citizens of our county are allowed to take with seines, and this is to petition Your Excellency to direct the Sheriff of Brevard County, State of Florida; not to enforce the fish laws now in force with reference to these lakes, but to permit the citizens of the County to take them with seines.

"The above petition is made because of the fact that in view of the drainage of the above lakes the fish therein

will be a total loss to the people of our State, and if permitted to take them with seines they will be of great advantage and benefit to our people."

As a general proposition, under our form of government no one except the legislature has the power to modify or change a statute of this State or waive the operation of its provisions.

If the lakes referred to, which are named in the petition, can be classed as "wet weather" lakes, the provisions of Chapter 5773, Acts of 1907, would apply, and food fish may be taken in the manner therein provided from April 1 to September 1 of each year. If, however, the lakes mention cannot be classed as "wet weather" lakes as defined in this statute, the provisions of Chapter 5973 of the Acts of 1909, would apply, and such fish could not be taken except as therein provided.

If, under the facts as they exist, the provisions of Chapter 5973 apply to the lakes involved, you, as Governor, have no power to waive the provisions of this statute and authorize the taking of fish in the manner described in the petition, and the only way for interested parties to secure such authority would be to have the Legislature to grant it, and, inasmuch as the Legislature will be in session before the time for taking the fish in the manner described in the petition, the subject can be taken care of by the Legislature and authority granted, if it is deemed advisable, for handling the matter in accordance with the wish of the petitioners.

Respectfully submitted,

T. F. WEST,
Attorney General.

PHYSICIANS—LIABILITY FOR PROFESSIONAL LICENSE TAX.

Tallahassee, Fla., April 14, 1917.

*Honorable Sidney J Catts, Governor,
Tallahassee, Florida.*

Dear Sir:—

Your letter of the 13 instant, requesting my opinion on whether a physician in the government service is exempt from the payment of the license tax imposed by law on members of that profession, is before me.

Section 442 of the General Statutes provides:

"The following enumerated individual license taxes shall be paid to the State by the persons *engaging in* the several occupations or professions named

"Physicians \$10."

Chapter 5481, Acts of 1905, exempted regular practicing physicians and surgeons from the payment of any license tax for practicing their professions. This latter act was repealed by Chapter 5597, Acts of 1907. See *State ex rel Wilson v. City of Pensacola*, 61 So. 193. So the State tax on physicians and surgeons stands today as it was prior to the passage of Chapter 5481, which exempted them.

In my opinion the decision of this question will turn on whether Dr. Proctor is engaged in "the practice of medicine."

"Practicing medicine within the meaning of a statute prohibiting practicing medicine without a license imports a practice of medicine for a compensation."

State v. Hale, 15 Mo. 606, 607.

If Dr. Proctor is engaged in the practice of medicine as

the expression is generally understood, he is liable for the license tax, and the fact that he may be engaged in the government service does not exempt him. On the other hand, if he is not so engaged but is exclusively engaged in the government service as a physician, he is not liable for the tax.

Respectfully submitted,

T. F. WEST,

Attorney General.

LOCAL STATUTES—PUBLICATION OF NOTICE OF
INTENTION TO APPLY FOR PASSAGE.

Tallahassee, Fla., April 14, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:—

Yours of the 12 instant has been received.

I note the copy of the communication from Honorable L. S. Light, Representative of Marion County in the House of Representatives of this State, relative to the question of the passage of local laws by the Legislature without notice of the intention to apply therefor having first been given as required by the Constitution of this State, and your inquiry relative to this matter.

The constitutional provision on this subject is Section 21 of Article III, reading as follows:

“In all cases enumerated in the preceding section all laws shall be general and of uniform operation throughout the State, but in all cases not enumerated or excepted in that section, the Legislature may pass special or local laws: Provider, That no local or special bill shall be

passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least sixty days prior to the introduction into the Legislature of such bill, and in the manner to be provided by law. The evidence that such notice has been published shall be established in the legislature before such bill shall be passed."

In the case of *Stockton v. Powel*, 29 Fla. 1, the court held that the question of whether or not the notice required by this constitutional provision has been given is purely a legislative function and that, when such acts were passed by the Legislature, the courts would assume that the required notice had been given. In discussing this question the court, at pp. 54, 55. said:

"The obligation resting upon the legislative department of the government to conform to the requirements of this provision of the Constitution, and to the statute law enforcing the same, cannot be questioned. No local or special bill within the purview of the proviso of this section of the organic law should be passed except and until notice of the intention to apply for the passage of the same has been given in the manner contemplated by the Constitution and authorized legislation thereunder, nor is it ever to be presumed that any branch of the legislative department will give its sanction to any such local or special legislation until legal and satisfactory evidence that such notice has been published shall be 'established in the Legislature.' This feature of the fundamental law is as binding upon the conscience of those entrusted with the legislative function of the government as is any other part of the Constitution, but this truth is by no means conclusive that power has been given the judiciary to sit in judgment upon the performance of the duty thus imposed upon a co-ordinate branch of the government. No such power has been given to the judi-

ciary. To decide whether or not the notice has been given, is a legislative function, not only in its nature, but as a result of the provision that 'evidence that such notice has been published shall be established in the Legislature before such bill shall be passed,' which provision, as excluding any interference in the matter by the judiciary, supplements the inhibition pronounced by the Second Article of the Constitution that no person properly belonging to one of the departments of the government shall exercise any power appertaining to either of the others, except in cases expressly provided for by that instrument."

Inasmuch as the determination of whether or not the required notice has been given is purely a legislative function, it would hardly, in my opinion, be held to be the duty of the Governor of the State to make inquiry in reference to the matter, since the Legislature is an independent, co-ordinate branch of the State government, and the Governor of the State has no power to control its action or to require that it pursue any particular course in regard to this or any other matter which is presented for its consideration.

Respectfully submitted,

T. F. WEST,

Attorney General.

TITLE TO LANDS BORDERING ON LAKE OKEECHOBEE FROM WHICH WATER HAS RECEDED.

Tallahassee, Fla., April 17, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

Yours of the 16 instant has been received and noted.
I note also the letter attached thereto from Charles A.

Bright of Fort Green, Florida, inquiring about the rights of settlers on lands bordering upon Lake Okeehcabee which were overflowed with water before the drainage operations now in progress there were begun.

This land, I think, belongs to the State. No policy has been adopted relative to its disposition, but I am confident that there will be no desire to sell it in large quantities rather than in small tracts, if it can be sold the latter way to best advantage. This, however, is not a legal question about which the Attorney General is authorized to officially advise, but is a practical matter which should first have legislative consideration and then will no doubt be handled by such board as the Legislature sees fit to vest with that authority.

It should be understood by settlers on this land that it is the property of the State and that no rights are acquired by locating upon and improving it.

Very respectfully,

T. F. WEST,

Attorney General.

RELIGIOUS DOCTRINES—PROPAGATION OF IN PUBLIC SCHOOLS.

Tallahassee, Fla., April 17, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

Yours of the 11 instant has been received.

I note the inquiry of the County Superintendent of Public Instruction and the copy of the resolution passed by the Board of Public Instruction of Pasco County, which reads as follows:

"Whereas there has come to the attention of the individual members of the Board of Public Instruction of Pasco County, certain rumors concerning the propagation of religious doctrines in the public schools of Pasco County, and

"Whereas, This is in violation of the laws of the State (if the said rumors be true).

"Therefore Be it Resolved, By the Board of Public Instruction of Pasco County, that the said Board relieve said condition by refusing to employ teachers who have church relationship other than church membership."

As I understand the situation, the term "religious doctrines" used in the resolution is regarded by the board as equivalent to sectarian doctrines, and the inquiry presented is, has the board of public instruction the power and legal authority to adopt and enforce a resolution of this kind.

By Section 6 of the Declaration of Rights in the Constitution of this State it is provided that:

"No preference shall be given by law to any church, sect or mode of worship, and no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or religious denomination, or in aid of any sectarian institution."

By Section 13 of Article XII of the Constitution it is provided that:

"No law shall be enacted authorizing a diversion or the lending of any county or district school funds, or the appropriation of any part of the permanent or available school fund to any other than school purposes; *nor shall the same, or any part thereof be appropriated to or used for the support of any sectarian school.*"

In the sixth paragraph of Section 347 of the General Statutes it is made the duty of boards of public instruction to employ teachers for every school in the county and to contract with and pay the teachers for their services.

And in the twelfth paragraph of this section it is made the duty of the board to perform all acts reasonable and necessary for the promotion of the educational interests of the county.

Under this law, if it appears to the Board of Public Instruction of Pasco County, as recited in the resolution, that any of the teachers in the public schools of the county are engaged in the propagation of sectarian doctrines in such schools, the board would, in my judgment, be fully warranted in taking such action as is appropriate to prevent such teaching and in declining to contract with any teacher who persists in the same.

Respectfully submitted,

T. F. WEST,

Attorney General.

OFFICERS—LOCAL OFFICERS SHOULD ADMINISTER LAWS.

Tallahassee, Fla., April 25, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:—

Yours of the 23 instant has been received and noted.

I wrote this man on the 9 instant and am attaching hereto copy of my letter to him.

His inquiry relates to the right of citizens to fish in Lake Apopka in Orange County. You know, of course, that the matter of the administration of laws of this kind is looked after by the local officers, and for that reason I suggested to him that he confer with the County

Solicitor of the county who can give him complete information on the subject.

Very respectfully,

T. F. WEST,

Attorney General.

PEDDLERS—EFFECT OF EXEMPTION FROM LICENSE TAX IN OTHER STATES.

Tallahassee, Fla., April 28, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:—

Yours of the 27 instant has been received.

I note your inquiry and the letter from Mr. A. H. Harvey, of Zephyrhills, Florida, to which is attached a certificate referred to as a Soldiers' and Sailors' Certificate granted to him under the laws of the State of New York and authorizing him to hawk; peddle, vend and sell by auction his own goods, wares or merchandise, or solicit trade within the State of New York. This certificate appears to be authorized under certain statutes of the State of New York and grants the privilege mentioned to the holder because of service rendered by him in the United States army.

He wishes to know if this certificate is good in this State, that is to say, if he, as the holder of this certificate is entitled to an exemption from the payment of a license tax in this State for hawking, peddling, vending and selling by auction his own goods, wares or merchandise, etc.

This certificate is granted to the holder under the laws of the State of New York. The laws of the State of New

York cannot confer upon the holder of such certificate this privilege while he resides in the State of Florida. While here he is subject to the laws of this State, and there is no statute giving this exemption in this State or authorizing it to be given to holders of certificates of this kind from other State while they are residents of this State.

Respectfully submitted,

T. F. WEST,

Attorney General.

OFFICER—STATE AND FEDERAL OFFICE BY
SAME PERSON.

Tallahassee, Fla., May 1, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:—

The letter of Mr. I. E. Diefendorf, of DeLeon Springs, Florida, addressed to Honorable James E. Alexander, has been referred by you to this office for attention.

Under the Constitution county commissioners are officers; and it is provided by the Constitution that no person holding or exercising the functions of any office under any foreign government, under the government of the United States or any other state, shall hold any office of honor or profit under the government of this State.

If the employment of Mr. McBride under the Federal government is such as would constitute him an officer under the government of the United States, he cannot hold such office and continue to fill the position of county commissioner, but without definite information

as to the character of this employment, I would not be able to say that the effect of his acceptance of it is to vacate the office of county commissioner. If additional information can be secured showing whether or not he is a commissioned officer of the Federal government, with the character of the duties performed and service rendered, I shall take pleasure in giving further consideration to the matter and advising you in regard to it.

Yours very truly,

T. F. WEST,

Attorney General.

PEDDLERS—AUTHORITY OF GOVERNOR TO
GRANT PERMIT TO CRIPPLES TO PEDDLE
WITHOUT LICENSE.

Tallahassee, Fla., May 11, 1917.

*Honorable Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

Yours of the 9th instant, with letter from Honorable A. D. Carmichael, of Chipley, and certificate of Doctors W. H. Green and W. E. Coleman, of Chipley, relative to the condition of Mr. James T. Morris and his desire for a permit to peddle without being required to pay the license tax imposed upon those who engage in this occupation, has been received.

The statute on this subject is Section 57 of Chapter 6421, Acts of 1913, Laws of Florida, reading as follows:

"That all confirmed cripples or invalids, physically incapable of manual labor, or all Confederate Veterans of the Civil War, and widows who are dependent upon their

own exertions, shall be allowed to peddle without paying a license, using their own capital only, not in excess of five hundred (\$500.00) dollars, and in counties in which they live; Provided, such exemption shall be allowed only upon the certificate of the county or other reputable physician of the disability herein named; Provided, This exception shall not apply to the sale of spirituous, vinous or malt liquors, lightening rods and cigarettes."

If Mr. Morris comes within the terms of this statute he of course should be allowed to peddle without being required to pay the license tax imposed, but there is no authority in the Governor of the State to grant to him a permit for this purpose. The local officers, whose duty it is to issue licenses, might give him a certificate showing that he is not required to pay this license tax before engaging in this occupation, if it is made to appear to them that he is within the class which is exempt under this statute.

I am returning herewith the letter and certificate referred to herein.

Respectfully,

T. F. WEST,
Attorney General.

**FISHING—AUTHORITY OF GOVERNOR TO GRANT
PERMISSION TO FISH IN CERTAIN LAKES.**

Tallahassee, Fla., May 1, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

The communication of Mr. J. E. Milton, of Frostproof, Florida, together with the petition of citizens of that community relative to the fishing by the people in certain lakes referred to in the petition, has been received.

Under the law of this State the Governor has no authority to waive or change in any way the provisions of a statute after it has been duly passed by the Legislature and approved by the Governor, and, therefore, you would have no authority to grant this petition and the people who fish in the lakes would be required to fish in the manner prescribed by the law applicable to this subject.

The Legislature, however, is now in session and the matter could be taken care of if the parties who are interested would submit it to the representatives in the Legislature from the county in which the lakes are located, provided, of course, it is deemed advisable and in the public interest to do so.

Very respectfully,

T. F. WEST,

Attorney General.

BRIDGES—AUTHORITY OF COUNTY TO PAY DAMAGES SUSTAINED BY DEFECTIVE BRIDGE.

Tallahassee, Fla., May 11, 1917.

*Honorable Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

Yours of the 8th instant, with letter from Dr. E. Porter Webb, of Laurel Hill, has been received and noted.

The inquiry from Dr. Webb relates to the loss sustained by Mr. Owen of Okaloosa County, who lost his wife and child, together with considerable property, as a result of the alleged defective condition of one of the county bridges, and it appears that the court has held that the county is not liable or that it cannot be sued by Mr. Owen and recovery had for the damage sustained by him.

This holding, I assume, is based upon the decision of the Supreme Court of this State in the case of James W. Keggin v. County of Hillsborough, 71 Fla. 356.

It is suggested by Dr. Webb that an act might be passed by the Legislature authorizing the county to pay Mr. Owen for the damage sustained. This might be done if some understanding could be arrived at as to the amount which he should receive which would be satisfactory to all parties concerned and which the representatives in the Legislature from that county would be willing to ask the Legislature to authorize in a special act which they would present to the Legislature.

There are decisions which hold the members of boards of county commissioners personally liable for damage sustained in cases of this kind, which it might be well to call to the attention of the parties interested. This was held in the case of Strong v. Day (Okla.) 160 Pac. 722, where the court, in the headnote to the opinion, said:

"The individuals composing a board of county commissioners are personally liable to any person suffering damage thereby, and who is himself not guilty of contributory negligence, for their negligent failure to repair a county bridge under their care and supervision; there being sufficient public funds available for making such repairs."

In order to take care of the situation it will be necessary that the matter be taken up by the local representatives in the Legislature and a special act passed covering the subject, and if this should not be done it will be necessary for the parties who are interested to consider the question of whether or not the facts warrant them in proceeding against the members of the board of county commissioners of the county for compensation for the damage sustained.

Respectfully,

T. F. WEST,

Attorney General.

TAXATION—EXEMPTION FROM TAXATION OF
DISABLED PERSONS.

Tallahassee, Fla., June 15, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

Your letter with copy of communication from Mr. J. C. Roquemore of Lakeland, Florida, describing his condition and inquiring if he is exempt from the payment of taxes in this State, has been received.

The exemption allowed in this State is under the provisions of Section 9 of Article IX of the Constitution, which reads as follows:

"There shall be exempt from taxation property to the value of five hundred dollars to every widow that has a family dependent on her for support, and to every person who is a bona fide resident of the State and has lost a limb or been disabled in war or by misfortune."

It would seem that Mr. Roquemore probably comes within the class defined by this constitutional provision.

Very respectfully,

T. F. WEST,

Attorney General

STATUTES—CONSTRUCTION OF LAWS BY OTHER
DEPARTMENT USUALLY APPROVED.

Tallahassee, Fla., June 15, 1917.

*Honorable Sidney J. Catts, Governor.
Capitol.*

Dear Sir:

Yours of the 6th instant with letter from Honorable D. F. Carlton of Tampa, Florida, and other correspondence relative to the subject-matter of his inquiry, has been received and noted.

It appears from his inquiry and the correspondence accompanying it that this matter has been submitted to the Comptroller, through whose office matters of this kind are given attention, and that the Comptroller in replying when the question was submitted to him referred to the statute which is applicable and controlling in such cases.

The views expressed in the reply of the Comptroller seem to be in accord with the provisions of the statute.

I am returning herewith the file of correspondence on this subject.

Very respectfully,

T. F. WEST,

Attorney General.

DEEDS—APPOINTMENT OF COMMISSIONER OF
DEEDS IN OTHER STATES.

Tallahassee, Fla., June 16, 1917.

*Honorable Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

Yours of the 22d ultimo relative to the appointment of Commissioners of Deeds by the Governor of this State in other States of the United States, has been received and noted.

The authority for the appointment of such commissioners, together with their duties and powers while serving in this position, is contained in Sections 309 to 311 of the General Statutes of 1906.

Very respectfully,
T. F. WEST,
Attorney General.

OFFICES—ELIGIBILITY OF LEGISLATOR AS MEM-
BER OF COMMISSION TO LOCATE HOSPITAL
FOR INSANE.

Tallahassee, Fla., June 28, 1917.

*Honorable Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

Yours of the 19th instant inquiring if Honorable W. G. Seals of Hampton, is eligible to appointment as a member of the commission created by House Concurrent Reso-

lution No. 26, providing for a committee of three to investigate and report to the next session of the Legislature regarding the location an erection of a modern hospital in this State has been received and noted.

Replying to this inquiry I would say that in my opinion the fact that Mr. Seals holds an office under the laws of this State would not make him ineligible for this position, since it is not an office.

Yours very truly,

T. F. WEST,

Attorney General.

GAME WARDEN—AUTHORITY OF GOVERNOR TO
APPOINT WITHOUT RECOMMENDATION OF
COUNTY COMMISSIONERS.

Tallahassee, Fla., September 13, 1917.

*Honorabel Sidney J. Catts, Governor,
The Capitol.*

My dear Sir:

Your communication of the 12th instant has been received, as follows:

"Will you kindly advise whether or not I have the authority to appoint Game Wardens unless recommended by County Commissioner and if so, under what conditions."

Replying to the above will advise that the law governing the subject is contained in Section 26, of Chapter 6969, Laws of Florida, Acts of 1915, as amended by Section 4, of Chapter 7311, Laws of Florida, Acts of 1917, which is as follows:

"Section 26. For the purpose of carrying out the pro-

visions of this act, immediately after its passage and approval, there shall be appointed in and for each county in the State, by the Governor, upon the recommendation of the Board of County Commissioners, a fit and competent person, resident of the county, as County Game Warden. The term of office of game warden shall be two years, except that the game warden first appointed under this act shall hold office until Tuesday after the first Monday in January, 1916, or until his successor is appointed and qualified. * * *

From the above it appears that you would not be clothed with full authority to appoint the County Game Warden without the recommendation of the Board of County Commissioner as therein provided. However, it appears that the provision requiring the recommendation of such proposed game warden to be appointed is mandatory and not optional.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

CORPORATIONS—AUTHORITY OF STATE TO
LIQUIDATE BANK STOCK GUARANTEED BY
THE TERRITORY OF FLORIDA.

Tallahassee, Fla., October 23, 1917.

Hon. J. S. Blitch,
Secretary to Governor,
Capitol.

Dear Sir:

I am in receipt of your letter of October 20th enclosing a letter from John B. Manning, 2 Wall Street, New York City, to Governor Catts, as follows:

"I am the owner of \$3,000. Bank of Pensacola 6% Stock, guaranteed by the Territory of Florida, dated April, 1835, and due January, 1860, with July, 1845 and subsequent coupons attached, which I have placed in the hands of the National Park Bank, of New York City, for collection.

"I sincerely hope that you will find it convenient to provide for same.

"I would kindly ask you to send me the last financial statement of your State, together with Map of the Territory of Florida.

The Governor desires my opinion upon the subject matter of the quoted letter. Upon inquiry of the Comptroller of this State, the following information has been given me with reference to this matter:

"It appears that the Territorial Council of Florida passed an Act to incorporate the Bank of Pensacola which was approved January 19th, 1831, and also adopted amendments to the original Act which were approved January 23d, 1832, February 4th, 1835, and February 10th, 1838, respectively, under which the Territory authorized the issue of money by said Bank upon which stock in said Bank was to be received by the Territory. And the amendment approved on February 14th, 1835, authorized the issue of capital stock to the amount of \$2,500,000.00, provided for the establishment of agencies, authorized the purchase of a railroad, and the issue of bonds not exceeding \$500,000.00, and required the Governor to make an endorsement on each of the bonds, when the stock had been so purchased or subscribed, for such stock as provided by the Act in the following certificate:

"TERRITORY OF FLORIDA:

In pursuance of the laws of this Territory, the within bond is hereby assigned and made payable to the bearer thereof, and the payment thereof, and of the interest

thereon as within stipulated, is hereby guaranteed by the Territory of Florida, and the faith of the Territory is pledged for the redemption thereof.

Given under my hand and the Great Seal of said Territory at the Executive Office, this....day of....., 183.. and of the Independence of the United Statesyear.

Governor of Florida."

By the Governor,
Secretary.

"Said amended Act also provided for the expenditure of money so obtained in the construction of the Alabama, Florida and Georgia Railroad.

"It was several years after the passage of this Act before any of these certificates were issued and in the meantime the question as to the right of the Territorial Council to pledge the property of the people of the Territory for the payment of indebtedness incurred by a private corporation in the conduct of its business was raised and the people declined to approve the action of the Council. Prior to 1842 a number of these certificates were fraudulently obtained from the Bank of Pensacola without consideration of any kind and the other certificates or guarantees of the Territory were returned to the Governor because they were found to be unavailable and useless on account of the fact that the Territorial Council did not have power to authorize the guarantee or pledge of the property of the people for the benefit of a private concern.

"The certificates of indebtedness, or bonds as they were sometimes called, to which you refer, must be some of those fraudulently obtained from the Bank of Pensacola, but whether they are or not, they are of no value whatever. Congress never authorized the Territorial Council to pass such legislation and when the people of the Territory were appealed to they declined to sanction

any such action. The Territorial Council subsequently repealed the Act authorizing the guarantee of such indebtedness."

"When the Territory was admitted into the Union in 1845 the Legislature passed 'An Act in relation to certain Associations claiming to exercise banking privileges in this State' the preamble of which recited that 'Whereas by the 14th Section of the 13th Article of the Constitution of the State of Florida the following provision is made:

'The General Assembly shall at its first session have power to regulate, restrain and control all associations claiming to exercise corporate privileges in the State, so as to guard, protect and secure the interests of the people of the State, not violating vested rights, or impairing the obligation of contracts.'

'And whereas, certain associations in this State, viz: The Union Bank of Florida, Bank of Pensacola, and the Southern Life Insurance and Trust Company 'claiming' to exercise Banking privileges, are charged to have violated their banking privileges, and thereby to have forfeited their charters, and whereas it is charged by others that the associations referred to are usurpations, and their Charters null and void. Now that these allegations and charges may be properly adjudicated, and those vexed questions be forever settled.'

"Under this Act and a resolution adopted at the Second Session of the Legislature in the same year, the Attorney General was directed to proceed to have such companies dissolved by the Courts. You will see by the preamble as quoted that the Bank of Pensacola was one of the companies specially mentioned."

From the foregoing letter I would suggest that you write Mr. Manning advising him that there is no legal obligation on the part of the State of Florida to liquidate

the alleged bank stock of the Bank of Pensacola, as mentioned in his letter.

I am herewith returning to you Mr. Manning's letter.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

ROADS AND HIGHWAYS—EASEMENT OVER PRIVATE PROPERTY FOR PRIVATE ROADWAY.

Tallahassee, Fla., November 12, 1917.

*Hon. J. S. Blitch,
Secretary to Governor,
Capitol.*

Dear Sir:

I am in receipt of your letter of the 10th instant enclosing letter from P. C. Hains, Jr., of Eokeelia, Florida, to the Governor with reference to certain matters pertaining to an easement over private property for road purposes, and in reply thereto I beg leave to advise that Sections 1, 2 and 3 of Chapter 7326, Laws of Florida, Acts of 1917, provide as follows:

"Section 1. When any land which is being used as a home or for agricultural or stock-raising purposes shall be shut off or hemmed in by lands, fencing or other improvements of other persons, so that no practicable route of egress and ingress shall be available therefrom to the nearest practicable public or private road, it shall be lawful for the owner or tenant thereof to use for persons, vehicles and stock an easement over and upon the lands which lie between the said shut-off or hemmed-in lands and such public or private road; and the use thereof, as

aforesaid, shall not constitute a trespass, nor shall the party thus using the same be liable in damages for the use thereof: Provided, that such easement shall be used only for the purposes aforesaid; and provided, further, that such use thereof shall be in orderly and proper manner.

"Section 2. When the lands over which the easement referred to in section one of this act shall be in use, or afterwards put to the use of inclosing farm or grove products, or live stock, it shall be the duty of the person using the easement over the same, when requested by the owner or occupant, to erect and maintain a gate at each place where said easement intersects a fence, which gate shall be kept closed when not opened for passage; and the gate so erected and maintained shall be in substantial conformity with the character of the fence at such intersection.

"Section 3. That for the purposes of this Act the word 'practicable' as used in section one shall be held and construed to mean 'without the use of bridge, ferry or turn-pike.'"

It would seem from the above provisions of this law that Mr. Hains, if he is in the condition set out in the State law, would have the right to an easement for the purpose of egress and ingress to his home.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

MILITIA—FROM WHAT FUNDS EXPENSES PAY-
ABLE WHEN CALLED OUT FOR PRESERVING
THE PEACE.

Tallahassee, Fla., November 13, 1917.

Hon. Sidney J. Catts,
Governor of Florida,
Capitol.

Dear Sir:

Replying to your oral request for my opinion as to what fund the vouchers for expenses incurred by the State Militia, that were called to Madison County recently to preserve the peace, should be approved for payment, I beg to advise that our Supreme Court in an advisory opinion to the Governor, dated October 5, 1917, used the following language:

"We are of the opinion that all members of any organized company of so-called County Guards, or at least those members of such companies between the ages of eighteen and forty-five years, constitute a part of the militia of the State, and are subject to your orders in any part of the State for the purpose of preserving the public peace, and to execute the laws of the State, and to suppress insurrection, no matter by what other name such organized body or bodies of men may be designated."

Therefore, it would appear that the name of an organization of militia has no effect upon the authority of the Governor to call out the militia of the State for the purpose of preserving the public peace, and to execute the laws of the State, and to suppress insurrection.

Chapter 6820, laws of 1915, the title of which is as follows: "An Act Making Appropriation for Salaries and Expenses of the State Government for Six Months of the Year 1915, and for the Year 1916, and for Six Months

of the year 1917," provides in Section 1 "expenses of the National Guard of Florida, and Florida Naval Militia, when called out to preserve the peace execute the law, etc., for two years \$6,000.00."

The evident intention of the Legislature in making this appropriation was to provide funds for the expenses of the Militia when called out to preserve the peace, execute the law, etc. I take it that the preserving of the peace, and the execution of the law was what the Legislature primarily intended to provide for, and in using the names "National Guard of Florida" and "Florida Naval Militia" did so because those were the names of organizations of a part of the State Militia.

When conditions arise, such as in the instant case, where such organizations as mentioned in the above provision of law have been incorporated in the United States Army in the time of war, and it becomes necessary to call out a part of the Militia of the State, other than such named organizations as mentioned in the above quoted Act, for the purpose of preserving the public peace, or to execute the laws of the State, or to suppress insurrection, it is my opinion that the appropriation mentioned in Section 1 of Chapter 6820, Laws of Florida, providing for the payment of "expenses of the National Guard of Florida and Florida Naval Militia when called out to preserve the peace, execute the law," etc., is such a fund as becomes available for the payment of the expenses of any part of the State Militia when called out for any of the purposes mentioned in said provision. This seems to me to be a necessary conclusion in order that the primary purpose for which the appropriation was made, viz.: The preserving of the peace and execution of the laws, may not be defeated.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

MILITIA—AUTHORITY TO PAY EXPENSES OF,
OUT OF GOVERNOR'S CONTINGENT FUND.

Tallahassee, Fla., December 18, 1917.

*Honorable Sidney J. Catts,
Governor of Florida,
Tallahassee, Florida.*

Dear Sir:

Replying to your inquiry of the 17th instant in which you desire to know whether or not you will be authorized to approve vouchers for the expenses incurred by the State Militia, ordered to Madison some weeks ago in order to preserve the peace during the trial of certain parties, out of the appropriation made for contingent expenses of State, I beg to advise that it is my opinion that the appropriation made for contingent expenses of the State may be used in so far as the same is necessary for the payment of such expenses as above mentioned, and that you would, as Governor, be authorized to approve vouchers covering such expenses to be paid out of said fund.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

PRISONERS—STATUTE FIXES AMOUNT
ALLOWED FOR FEEDING.

Tallahassee, Fla., November 16, 1917.

*Hon. Sidney J. Catts,
Governor of Florida,
Capitol.*

Dear Sir:

I am in receipt of your communication of the 14th instant enclosing letter from J. P. Brown, Sheriff of Brevard County, to you with reference to the matter of the amount provided by statute for the feeding of prisoners, and in reply to your communication I beg to advise that I know of no authority that would authorize the changing of the amount allowed by law for the feeding of prisoners.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

INTOXICATING LIQUORS—PERCENTAGE OF
ALCOHOL—BEVERAGE PURPOSES.

Tallahassee, Fla., November 14, 1917.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of yours of the 9th inst. enclosing letter from P. G. Ramsey, Sheriff of Alachua County, to you. Also letter from Hon. R. E. Rose, State Chemist,

to Mr. Ramsey, and note that you desire my opinion upon the subject matter of these communications.

Replying to your inquiry I beg to advise that the fourth paragraph of Section 1 of Chapter 7283 provides as follows:

"Fourth. Any place adjacent to or near the premises of any club, corporation or association, or other combination of persons, to which members or their guests, or others by permission of members, resort for the purpose of drinking said liquors and beverages, or any of them, that are kept at or near such places. Any of the places herein designated if kept and maintained shall be and constitute an unlawful drinking place, and the act of keeping and maintaining any such room or place shall be deemed a separate offense for each day that it continues."

It would seem from this provision of law that where any liquors containing one-half of one per cent. of alcohol or more are sold for beverage purposes it would be a violation of the law. The question of whether such liquid or liquors are sold for beverage purposes is one of fact and would have to be determined in each individual case.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

BONDS—AUTHORITY TO ENFORCE PAYMENT ROAD BONDS.

Tallahassee, Fla., November 15, 1917.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 12th instant enclosing a letter to you from Mr. Edward Parkin-

son, of Fort Myers, Fla., with reference to the sale of bonds by the Caloosahatchie Valley Road District to the Fort Myers Bank and the refusal of said Bank to complete the payments for such bonds, alleging as its reason therefor that the parties to whom it had resold the bonds had fallen down on them.

Replying to your inquiry I beg to advise that assuming that there were no conditions in connection with the sale of the bonds to the Bank that would authorize them to withhold payment thereof, it occurs to me that the Caloosahatchie Valley Road District should institute proceedings against the Bank to cause a compliance with its contract for the purchase of the bonds in question.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SCHOOLS—EXAMINATION OF WHITE AND
COLORED TEACHERS IN SAME ROOM—EM-
PLOYING UNAUTHORIZED TEACHERS.

Tallahassee, Fla., November 22, 1917.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of a communication from your office enclosing letter from Mr. D. H. Whetstone, of Eau Gallie, Florida, to you with the request that I advise you with reference to the subject matter of Mr. Whetstone's letter.

Replying to your inquiry I beg to advise that the letter of Mr. Whetstone does not indicate the kind of bonded indebtedness which he says the County Board is paying out of the General School Fund, that is, whether it is indebtedness of the whole county or whether it is bonded indebtedness of a special tax school district. The facts

set out by Mr. Whetstone upon this matter are not sufficient for me to say whether the action of the County Board was proper or not.

As to the matter of the County Superintendent holding teachers' examination for both whites and colored in the same room, beg to advise that I know of no provision of law prohibiting such action, but I understand it is the general custom to make provision for holding these examinations separately, and I think it should be done.

With reference to the matter of hiring and paying teachers who do not hold valid certificates, Section 4 of Chapter 7372, Laws of 1917, provides as follows:

"No person shall teach any subject in a public school unless he holds a valid certificate covering the subject taught."

This provision of law is very plain and means what it says. Persons should not be allowed to teach subjects not covered by their certificates.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

GRADUATE TEACHER'S CERTIFICATE—NOT AUTHORIZED TO PERSONS GRADUATING PRIOR TO JUNE, 1905.

Tallahassee, Fla., December 3, 1917.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 3rd instant in which you ask for my opinion as to whether under the provisions of Section 17 of Chapter 7372, Laws of Florida, a person who graduated from a college in this State in

the month of May, 1905, would come within the provisions of said section.

Replying to your inquiry I beg to advise that Section 17 of Chapter 7372 provides in part as follows:

"Any regular graduate of a standard university, college or normal school having graduated therefrom since June 15th, 1905, desiring to teach in Florida, shall pay a fee of Five Dollars and file his or her diploma, or a certified copy thereof, with satisfactory evidence of having taught school successfully for twenty-four months, with the State Superintendent of Public Instruction, who with the State Board of Examiners provided for in this Act shall constitute a commission to review and pass upon all applications for certificates based upon diplomas, and if found satisfactory the State Superintendent shall issue a Graduate State Certificate."

It appears that the time fixed in this section for persons to receive certificates to teach upon diplomas from Universities, Colleges and Normal Schools is the year in which a reorganization of all the State Colleges was made (1905) by what is commonly known as the "Buckman Bill," and the month and date thereof is fixed (June 15) at a time subsequent to the graduating and receiving of diplomas from any of the State Colleges in existence prior to the enactment of the "Buckman Bill." It therefore appears that it was evidently the intention of the legislature to exclude all those who graduated and received diplomas prior to the date fixed by the Act, namely: June 15th, 1905.

It is my opinion that a person who graduated prior to June 15th, 1905, would not come within the provisions of Section 17 of Chapter 7372, Laws of Florida, Acts of 1917.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

SCHOOL DISTRICT—AUTHORITY TO PAY BONDS
FROM GENERAL COUNTY FUNDS.

Tallahassee, Fla., December 5, 1917.

*Hon. J. S. Blitch,
Secretary to Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 26th instant enclosing letter from Mr. D. M. Whetstone, of Titusville, Florida, to Governor Catts, and note your request to be advised with reference to Mr. Whetstone's letter.

Replying to your inquiry, I beg to advise that from the statement in Mr. Whetstone's letter, it appears that Special Tax School District No. 1, in Brevard County, issued bonds for the purpose of erecting school buildings; that a levy of five mills on the property within the Special Tax School District did not produce enough money to provide for the interest and retiring of the said bonds, and that no wthe County Board of Public Instruction is using the general school funds of the County to make up the amount which the five mill levy failed to do in order to pay said bonds and interest.

Replying further, I beg to advise that under the provisions of Section 347, of the General Statutes, it appears that a Special Tax School District is entitled to receive its proportion of money set apart for school purposes out of the general school fund of the County. However, I do not find any law authorizing the County School Board to appropriate general county school funds to the payment of a bond issue of a Special Tax School District.

With reference to that part of Mr. Whetstone's letter with reference to the State Superintendent, I will state

that I am inclined to think that he has over-looked Section 5 of Chapter 7372 relative to temporary certificates being issued by the State Superintendent of Public Instruction.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

COUNTY GUARDS—DEFICIT IN COUNTY TAX
LEVY TO DEFRAY EXPENSES.

Tallahassee, Fla., January 7, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 4th instant enclosing letter from Capt. S. A. Simpson, of Monticello, Florida, with reference to the payment of certain bills incurred by him upon the authority of the Board of County Commissioners of Jefferson County in the matter of equipping the Home Guards of said County, and asking for my opinion upon the matters therein involved.

Replying to your communication, I beg to advise that Section 13 of Chapter 7292, Laws of Florida, Acts of 1917, with reference to the above subject matter provides in part as follows:

"If funds are not available in the treasury of the county for the immediate payment of such accounts, it shall be the duty of the Board of County Commissioners to issue certificates of indebtedness, payable in not more than eighteen months thereafter and bearing interest at the rate of not exceeding six per cent. which certificate

may be sold at public sale and the sum realized applied to the payment of the said accounts for said expenses of said Guards as aforesaid. The sum total of said certificates so issued shall be raised by special county assessment in the tax budget for the next succeeding year and applied to the payment of such certificates in the order of their respective issue."

It is my opinion that funds may be raised for the payment of bills incurred under this Section as provided in the above quoted provision of law. In as much as it appears that a levy of one-quarter of a mill was made by the County Commissioners of Jefferson County to cover this expense, but which did not provide sufficient funds to defray the same, it is my opinion that the County Commissioners would be authorized to issue certificates of indebtedness to cover that amount of the expense incurred which the previous levy did not cover, and take care of the same in their next annual budget as is provided for in the law above mentioned.

I am returning herewith Mr. Simpson's stated letter.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

OFFICERS—WHO ARE STATE OFFICERS?

Tallahassee, Fla., January 7, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

Replying to your verbal request for my opinion as to who are State Officers in this State, I beg to advise that

under the decision in the case of *State ex rel. Clyatt v. Hocker*, Judge, 39 Fla., 477, a State Officer is one who is in the service of the Government who derives his position from a duly and legally authorized election or appointment, whose duties are continuous in their nature, and defined by rules prescribed by Government, and not by contract, consisting of the exercise of important public powers, trusts or duties, as a part of the regular administration of the Government, the place and the duties remaining, though the incumbent dies or is changed, and who exercises some portion of the sovereign power, either in making, executing or administering the laws, and whose field for the exercise of his jurisdiction, duties and powers is as a general rule co-extensive with the limits of the State.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

HOLIDAYS—AS APPLICABLE TO THE OFFICE OF
CLERK OF THE CIRCUIT COURT.

Tallahassee, Fla., January 8, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 5th instant enclosing letter from Hon. J. N. Brown, Clerk of the Circuit Court, Clearwater, Florida, in which he asked to be advised as to what, in your opinion, are considered legal holidays in respect to the office of the Clerk of the Circuit Court.

Replying to your inquiry, I beg to advise that I know of no law setting out specifically what holidays are to be observed by Clerks of the Circuit Courts of this State. The legal holidays in this State are: The first day of the week, commonly called Sunday; the first day of January, New Year's day; January 19th, birthday of Robert E. Lee; February 22d, Washington's birthday; April 26th, Memorial day; June 3d, birthday of Jefferson Davis; July 4th, Independence day; first Monday in September, Labor day; General Election day; the day set apart each year by the President of the United States or the Government of Florida as "Thanksgiving day"; December 25th, Christmas day; and, in cities or towns where carnival associations are organized for the purpose of celebrating the same, the day in each year known as Shrove Tuesday, shall for all purposes whatsoever as regards the presenting for payment or acceptance and of the protesting and giving notice of dishonor of negotiable instruments, be treated and considered as public holidays.

Whenever any legal holiday shall fall upon a Sunday, the Monday next following shall be deemed a public holiday for all and any of the purposes aforesaid.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

FISHING—LEGALITY OF FISHING ON SUNDAY.

Tallahassee, Fla., January 8, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your letter of the 5th instant. as follows:

"Enclosed please find a letter from Chas. Miller, of Palatka, Fla., who is sore over the fact that the Sheriff of his county will not allow any Sabbath fishing, etc., on Sunday. Kindly look up the law and give it to me so that I may advise him what he and the fishermen may expect."

Replying to your inquiry I beg to advise that Section 3778, Compiled Laws of Florida, 1914, provides:

"FISHING FOR SHAD BETWEEN SATURDAY NIGHT AND MONDAY MORNING. Whoever fishes for shad between sundown on Saturday afternoon and sunrise on Monday morning of every week shall be punished by a fine not exceeding one hundred dollars, and by confiscation of the boat and fishing tackle used in such unlawful acts."

Chapter 6877, Laws of Florida, Acts of 1915, is an Act to protect and regulate the salt-water fishing industry of the State of Florida, and to provide penalties for the violation of this Act. Section 26 of this law provides that "all laws and parts of laws, whether general or local in their nature, in conflict with this Act be and the same are hereby repealed."

The provisions of Section 3778 of the Compiled Laws of 1914, above quoted, is not in conflict with any of the provisions of Chapter 6877, and therefore it is my opinion that Section 3778 is still in full force and effect.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

OFFICES—HOLDING THAT OF JUDGE OF CRIMINAL COURT OF RECORD AND CAPTAIN OF HOME GUARDS.

Tallahassee, Fla., January 8, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your communication of January 4th, enclosing letter from Judge James T. Sanders, of Miami, asking whether or not his commission as Captain of the Home Guards will conflict with his commission as Judge of the Criminal Court.

Replying to your communication I beg to advise that Section 15 of Article 16 of the Constitution of this State provides as follows:

"No person holding or exercising the functions of any office under any foreign government, under the government of the United States, or under any other State, shall hold any office of honor or profit under the government of this State; and no person shall hold, or perform the functions of, more than one office under the government of this State at the same time; Provided, Notaries public, militia officers, county school officers and commissioners of deeds may be elected or appointed to fill any legislative, executive or judicial office."

It appears from this constitutional provision that there is no inhibition of a Judicial officer being an officer of the Militia of this State.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

LICENSES—TO STORE OR USE EXPLOSIVES
DURING WAR.

Tallahassee, Fla., January 10, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 7th instant enclosing communications from Hon. Van H. Manning, Director of Bureau of Mines; also pamphlet containing an Act relative to the prohibition of the manufacture, distribution, storage, use and possession in time of war of explosives, providing for the regulation of the manufacture and sale thereof; also proclamation of the President upon the same subject, and I note that you request to be advised as to whether or not under this law the State of Florida should obtain a license in order that it may comply with the provisions of the above mentioned law.

Replying to your inquiry, I beg to advise that under the definition of "person," as contained in Section 4 of this Law, if any of the departments of our Government, i. e., any of our Institutions,—Hospital for the Insane, State Prison Farm, Industrial School for Boys, or other similar Institutions belonging to the State of Florida, are using any of the explosives mentioned in the law above referred to that it would be proper to obtain a license from the Director of the Bureau of Mines.

Should it be necessary to make application for a license, it is provided in Section 8 that information regarding the use of explosives should be set out in such application. It is purely a question of fact whether or not it is necessary for the State of Florida to procure such a license. However, as mentioned above, if any of our Institutions, or agencies, are purchasing or using

the explosives mentioned in the above mentioned law it would be necessary to procure a license.

I am returning herewith all enclosures above referred to.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

COUNTY GUARDS—WHO REQUIRED TO EXECUTE
 BOND FOR USE OF U. S. RIFLES BY HOME
 GUARDS?

Tallahassee, Fla., January 11, 1918.

*Hon. Sidney J. Catts, Governor,
 Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 9th instant which reads as follows:

"Enclosed please find a letter from the Brigadier General, C. B. Wheeler, Washington, D. C., enclosing a partially prepared bond in regard to the rifles and ammunition sent to Florida for the purpose of supplying a part of the Home Guards. Kindly instruct me as to how to fill out said bond so that it may be speedily returned to his office."

Replying to your inquiry, I beg to advise that it appears from Section 5, Special Regulations No. 37, Governing the Issue of Rifles and Ammunition to Home Guards, that where "a bond is required, it must be signed by the Commanding Officer of the State, Territory or District Guard of the State, Territory, or District of Columbia, for which use the property is issued * * *."

In the case before us, as I understand it, the use of the property is for a District Guard of the State, namely, the Hillsborough County Home Guards. This being true, the blank should be executed by the Commanding Officer of said Home Guards, and a certified copy of the commission of the Commanding Officer thereof must be attached to the bond.

I am returning herewith Mr. Wheeler's letter, also blank bond and Special Regulations No. 37.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

OFFICERS—MALCONDUCT IN TAKING AFFIDAVITS TO BLANK FORMS USED BY REGISTRANTS.

Tallahassee, Fla., January 11, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 10th instant which reads as follows:

"Enclosed please find a letter from Hon. J. P. Galloway, Chairman of the Local Board of Marion County, charging Mr. Bailey, a Notary Public, with speculating on the ignorance of the registrants of his county and imposing upon them, and asking me to take his commission away from him. Will you kindly go thoroughly over this matter and see whether Bailey has done anything that would cause me to take his commission away from him. Kindly give me your written opinion in regard to the

same so that I may quote what you have to say in regard to this to Mr. Galloway."

Replying to your inquiry, I beg to advise that if Mr. John E. Bailey as Notary Public is taking affidavits to blank forms as indicated in the letter of the Local Board for the County of Marion, State of Florida, in the matter of registrants filling out the Questionary, it occurs to me that such acts amount to a breach of the good faith and rightful actions that are tacitly required of all Officers, and would, upon a proper showing by affidavits presented to you, subject him to the revocation of his commission as a Notary Public for malconduct in office.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

ALIENS—TAKING OFFICIAL CENSUS OF, BY THE
STATE.

Tallahassee, Fla., January 18, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

Your letter of the 16th instant duly received which reads as follows:

"Enclosed please find a communication from Hon. W. A. MacWilliams of St. Augustine, stating that he thinks it my duty under Chapter 7394, Acts of 1917, to provide for the registration of aliens.

"I noticed in the newspapers a few days ago that the U. S. Government was going to do this very thing. Do you think that it will be necessary for me to do as he

suggests or do you think it best to let the Government carry out this law."

Replying to the above, will state that I hardly think it necessary as suggested by Hon. W. A. MacWilliams to require the State at this time to register the aliens of this State. It has been the policy of this State not to take a census upon the same subject and in the same period as the United States does. You have perhaps noticed that under the recent Espionage Act the United States' authorities will undertake this work possibly as soon as the proclamation is issued and the methods worked out by the proper authorities having the matter in hand. It would entail some expense to the State, and the United States Government, through its very efficient system, will, no doubt, cover the field thoroughly. In the event the Government should not cover the field thoroughly, it would then be a matter of policy whether or not in your discretion the matter should be further acted upon by the State under Chapter 7374, laws of 1917. In the event the Government should not take this matter up within a reasonable time you would, in my opinion, be authorized to do so.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

CORPORATION—AUTHORITY OF THIS STATE TO
ISSUE LETTERS PATENT FOR NON-RESIDENT
RAILROAD.

Tallahassee, Fla., January 21, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 17th

instant enclosing copy of a letter from C. A. DeWitt, Counsel for the Manila Railroad Company, and upon which you desire my opinion, which letter reads as follows:

"This letter is to inquire whether or not you would issue letters patent to a proposed corporation organized for the exclusive purpose of owning, constructing, maintaining and operating a railroad line in the Philippine Islands, under the provisions of Section 2814 of the Compiled Laws of the State of Florida."

Replying to your inquiry, I beg to advise that Section 2814, of the Compiled Laws of Florida, 1914, provides as follows:

"Companies may exercise rights outside of State. Any railroad or canal company heretofore or hereafter incorporated under the laws of this State, may exercise all its rights, franchises and privileges in any other State or Territory of the United States, under and subject to the laws of the State and Territory where it may exercise, or attempt to exercise the same, and may accept from any other State or Territory, and use any other additional power and privilege applicable to carrying of persons and property by railway, steamboats or ships, in said State, Territory, or on the high seas or otherwise, applicable to the doings of said company as herein provided."

Section 2800, General Statutes, reads as follows:

"Additional Requirements. The proposed charter of a railroad or canal company, in addition to the general requirements, shall state the place from and to which the railroad or canal is to be constructed, or maintained and operated, the length of the same, as near as may be, and the name of each county in the State through or into which it is made or intended to be made."

It would seem that it is contemplated by this Section that the place from and to which a railroad is to be constructed in the State should be given in the charter. Also

under the first paragraph of Section 2643, General Statutes, it is provided that the proposed charter of corporations organized in this State shall give the place or places of business.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

ROADS—DRAINING HIGHWAYS ONTO PRIVATE
PROPERTY.

Tallahassee, Fla., January 25, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your communication of the 24th instant enclosing a letter to you from W. O. Jones, of Wauchula, Florida, in which he asks the following question: "Has a County Commissioner any authority to drain ponds and highways onto a man's land?" and states that "the water can be drained off at a great expense to myself, but it seems to me that the county should do this, as it has turned it on to my hand."

Replying to your communication I beg to advise that there is a general law with reference to drains by counties, and there are also several local drainage laws applicable to DeSoto County, and as Mr. Jones does not set out sufficient facts to indicate under what authority the drains complained of were constructed, we are not in position to advise as to his rights or remedy in the premises. I would suggest that if the property rights of Mr. Jones have been infringed upon that he call upon

the Board of County Commissioners for reparation thereof, and if a satisfactory adjustment cannot be reached, that he consult some local attorney with reference to the matter.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COUNTY GUARDS—AUTHORITY OF COMMANDER
TO COMPEL ATTENDANCE AT DRILLS.

Tallahassee, Fla., January 26, 1918

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your communication of January 24th, as follows:

"Mr. Gwynn Crawford, who is Sergeant in the Home Guard Company of Leon County, in his own name and in the name of Captain Spiller has come to me asking that I get an opinion from you as to what authority the Commanding Officer of the Home Guards has in ordering or controlling said Home Guards.

"The trouble, as Sergeant states, is that the young men will not attend the drill, and the Commander-in-Chief, Capt. Spiller, notified them if they did not come to Drill next Tuesday night he would send a squad of men for them. They do not want to go beyond the law but wish to know if they have the right to go and compel them to attend. As next Tuesday is Drill night they are anxious to have you render them an opinion at once."

Replying to your communication I beg to advise that,

Sections 2, 9 and 12, of Chapter 7292, Laws of Florida, which Sections are provisions of the law providing for the organization of Companies of County Guards, provides as follows:

"Sec. 2. The armament, equipment and organization of the Guards and its system of discipline and exercises shall conform as near as may be with such changes as the commanding officer may find necessary to prescribe, to that which is now prescribed for the National Guard of Florida.

"Sec. 9. The regulations for the government of the National Guard of Florida shall be applicable to and shall govern the said Guards, subject to such revision as may be made by the commanding officer, and in so far as they are not inconsistent with the Constitution of the United States, of Florida, and of this act.

"The commanding officer shall have the power to make such rules and regulations as may be deemed proper and necessary for the government, guidance, regulation and discipline of the said Guards.

"Sec. 12. Summary court martials may be ordered for the trial of non-commissioned officers and enlisted men of the Guards, and such court shall have the power to discharge from the service and to reduce to an inferior grade, in the case of non-commissioned officers. The summary court shall consist of one or more officers detailed by the commanding officer of the Guards for that purpose. All findings of the summary court shall be reviewed by the commanding officer of the Guards before sentence or judgment shall become effective, and it shall be within the power of said commanding officer to change such findings or judgment of said court as he may see fit."

It appears from these revisions of law that it was the intention of the Legislature to cause companies of County Guards, when organized, to conform as far as practicable to the regulations of the National Guard of Florida.

Sections 708 and 715 of the Compiled Laws of Florida 1914, provide respectively as follows:

"708. THE SUMMARY COURT.—The commanding officer of each garrison, fort, post or other place, regiment or corps, detached battalion, detached company or other detachment in the National Guard of Florida, shall have power to appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and to try the enlisted men of such garrison, fort, post or other place, or of such regiment or corps, detached battalion, detached company or other detachment in the National Guard of Florida, for breaches of discipline and violations of the laws governing such organizations; and said court, when satisfied of the guilt of an accused soldier, may impose fines not exceeding twenty-five dollars for the same offense; may sentence non-commissioned officers to reduction to the ranks; may sentence to forfeiture of pay and allowances, or, when the troops are in the field in camps of instruction, at rendezvous for target practice, on practice marches, or otherwise engaged in active service, may sentence to confinement; Provided, that such confinement shall not extend beyond the time of the return to its home station of the command to which the soldier belongs and its relief from duty. The proceedings of such courts shall be informal, and the minutes thereof shall be the same as is prescribed for summary courts in the Army of the United States. No sentence of a summary court shall be binding or of effect until approved by the officer appointing the court, or the officer commanding for the time being. The summary court shall have power to issue warrants to the Sheriffs of the State to arrest accused persons and bring them before it for trial whenever such persons have disobeyed an order in writing from the officer appointing such court to appear before it; a copy of the charge or charges being delivered to the accused with said order. The summary court shall also have

power to issue subpoenas for witnesses, to punish for refusal to be sworn or answer, as in the case of other military courts. The commanding officers authorized to approve the sentences of summary courts, and superior authority, shall have power to remit or mitigate the same.

"715. EFFICIENCY OF TROOPS, OFFICERS RESPONSIBLE FOR.—The Officer commanding the organized militia of this State may cause those under his command to perform any military duty, and shall be responsible to the Governor for the general efficiency of the organized militia and for the drill, instruction, inspection, small-arms and artillery practice, and care of the troops. The commanding officers of organizations shall be responsible to their immediate commanders for the equipment, drill, instruction and efficiency of their respective commands. All commissioned officers and enlisted men shall be responsible to their immediate commanding officers for prompt and unhesitating obedience, proper drill and the preservation and proper use of the property of the United States, State or organization in their possession."

It appears from the provisions of Section 9, Chapter 7292 above quoted that members of County Guards are subject to the regulations that govern the National Guards.

Section 715 of the Compiled Laws of Florida, above quoted, which is one of the provisions of law governing the National Guards, provides among other things that "all commissioned officers and enlisted men shall be responsible to their immediate commanding officers for prompt and unhesitating obedience, proper drill, and the preservation and proper use of the property of the United States, State or other organization in their possession."

Upon a failure to comply with this provision of law by a National Guardsman, Section 708 above quoted would apply, and from the provisions of Sections 2, 9

and 12, of Chapter 7292 above quoted it would seem that unless the commanding officer of the County Guards has made some rule or regulation contrary to the provisions of said Sections 708 and 715 of the Compiled Laws of Florida, that they would be applicable to companies of County Guards.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

OFFICERS—DUTY TO ASSUME THAT STATUTES
ARE CONSTITUTIONAL UNTIL COURTS DE-
CLARE OTHERWISE.

Tallahassee, Fla., January 28, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

Replying to your oral request for my opinion upon the subject matter of letter to you from Mr. S. D. Harris, of St. Petersburg, under date of January 26th. Mr. Harris' letter is as follows:

"I have been reliably informed that Hon. John U. Bird, County Solicitor for Pinellas County, has refused to prosecute under Chapter 7572 No. 314 of the Acts of 1917, which prohibits the catching of fish with seines or dragnets in ponds, lakes, creeks, rivers or bayous in Pinellas County, Florida. This bill was passed at the urgent request of a very large number of our citizens, and became a law upon your approval, May 30th, 1917.

"Mr. Bird refused to prosecute on the ground that the law was unconstitutional. Would you get an opinion

from the Supreme Court, or if not from the Supreme Court, from the Attorney-General, as to the constitutionality of this law? It is very important that this law be enforced. My opinion is that Mr. Bird went out of his way to disregard a good law, and I am not aware that it is the province of the County Solicitor to pass on the constitutionality of the Acts of the Legislature. I had supposed that that was left for the Courts. However, as the case now stands, the law is null and void so long as Mr. Bird maintains his present position. Therefore, I will appreciate it very much if you will get action as early as possible."

It is presumed that every law is constitutional until it has been declared otherwise by a court. I have examined the provisions of Chapter 7572, mentioned in Mr. Harris' letter, and upon its face I see no reason for assuming that it is unconstitutional.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

WATCHMEN—AUTHORITY TO ARM WATCHMEN
AT MANUFACTURING PLANTS.

Tallahassee, Fla., January 24, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I have before me letter dated December 26, 1917, from A. M. Schoen, of Atlanta, Georgia, to Mr. John A. Whitner, Jr., Chairman, Florida Fire Prevention Committee, Jacksonville, Florida; also letter from Mr. Whitner to

Hon. J. C. Luning, State Treasurer, under date of the 7th instant, and Mr. Luning's reply to Mr. Whitner's communication under date of the 15th instant.

I gather from reading these communications that you desire to know whether or not armed guards and watchmen employed by manufacturing plants have the authority to be armed without some authority of law, and if not through what instrumentality or agency they could be authorized to carry arms.

The Sheriffs of this State have authority to appoint Deputy Sheriffs, and when appointed they are then authorized to carry arms, and it occurs to me that if such guards and watchmen as are employed by manufacturing plants were appointed Deputy Sheriffs with limited authority that the situation might be by this means lawfully handled.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

SHERIFFS—RESPONSIBILITY FOR SAFE KEEP-
ING OF PROPERTY FOUND ON PRISONER.

Tallahassee, Fla., January 24, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 23d instant enclosing a letter to you from Hon. J. C. Van Pelt, Sheriff of Escambia County, and note what you have to say, also the contents of Mr. Van Pelt's letter.

Replying to your communication, I beg to advise that

it is very generally held that in all civil actions where a sheriff comes into the possession of property under an attachment or execution or other process of the Court he is held to a strict accountability therefor.

With reference to the matter of a sheriff being responsible for the personal property of a person who is arrested, and having such personal property with him at the time, is one which seems not to have been before our courts for determination. There is no statute upon the subject. It has been held by other courts that in a case where a person was arrested for larceny and not only the property that was alleged to have been stolen was taken from him but also other property, that in such case the sheriff was liable to the party for the property taken from him other than that which was alleged to have been stolen.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

FISHING—ALIENS AND NON-RESIDENTS FISH-
 ING WITH HOOK AND LINE USING BOATS.

Tallahassee, Fla., January 28, 1918.

*Hon. Sidney J. Catts, Governor,
 Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 28th instant enclosing letter from Hon. J. A. Williams, Shell Fish Commissioner, in regard to the matter of aliens and non-residents fishing in Florida waters, and note your

request for my opinion with reference to the subject matter of Mr. Williams' letter.

Replying to your communication, I beg to advise that on December 20, 1917, I wrote Mr. Williams as follows:

"I am in receipt of your communication of the 19th instant in which you make the following inquiry:

"Is an alien or non-resident of this State who shall engage in taking fish or oysters from the salt waters of this State for any purpose other than his own individual use required to pay a license tax of ten dollars if he takes them with hook and line?"

"Replying to the above, I beg to advise that paragraph seven of Section 14 of Chapter 6877 provides as follows:

"Whoever being an alien or non-resident of this State, and who shall engage in taking fish or oysters from the salt waters of this State for any purpose other than his own individual use, shall be required to pay a license tax of ten dollars per annum."

"The last paragraph of the above mentioned Section provides as follows:

"The payment of a license tax, or the procuring of any license shall not be required of persons fishing only with hook and line or with rod and reel or similar device."

"I take it that it was not the intention of the Legislature to require persons who fish with hook and line only for their individual use to pay a license tax, but when non-residents and aliens use a boat for the purpose of fishing with hook and line for other purposes than their own individual use, then I think they should pay the license required by law."

The above quoted letter sets out the position taken by me with reference to the question of fishing with hook and line for other purposes than one's own individual use.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

OFFICES—HOLDING BOTH U. S. COMMISSIONER
AND JUSTICE OF THE PEACE.

Tallahassee, Fla., January 29, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 28th instant enclosing letter from Mr. Albert Buford, of Marianna, to you; also a letter from Mr. Hoffman, Assistant United States Attorney, to Mr. Buford, with reference to the question whether or not Mr. Buford can hold the position as United States Commissioner under the Government of the United States, and Justice of the Peace under the laws of the State of Florida at the same time.

Replying to your communication, I beg to advise that under the provision of Section 15, of Article 16, of the Constitution of the State of Florida, I do not think that Mr. Buford can hold these two offices at the same time.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COSTS—DEPOSIT OF COSTS REQUIRED IN CER-
TAIN CASES BEFORE INSTITUTION OF SUIT.

Tallahassee, Fla., January 29, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 28th instant enclosing a joint letter from Mr. E. M. Talley and Mr. T. C. Smyth, of Tavares, Lake County, Florida; also

a letter from Nathaniel Allen, of Fruitland Park, Florida, and note that you desire to be advised as to whether or not Mr. Talley and Mr. Smyth acted as they should with reference to the matter mentioned in the two letters above referred to.

Replying to this inquiry, I beg to advise that under the provision of Chapter 5651, Laws of Florida, Acts of 1907, it is provided that in all cases of the Justices of the Peace and County Judges in this State they shall require payment in advance or security for costs of process, service of the same, and of examination unless the party applying for a warrant shall make an affidavit of insolvency and of substantial injury to person or property by him suffered.

Under the provision of the law mentioned it would seem that Mr. Talley and Mr. Smyth proceeded in accordance with its terms.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

POSTAGE—COUNTY NOT AUTHORIZED TO FURNISH POSTAGE FOR TAX COLLECTOR.

Tallahassee, Fla., February 1, 1918.

*Hon., Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of January 30th which reads as follows:

"The Tax Collector of Walton County, Florida, has charged me six cents postage for writing me two letters.

Is this the law or does the County provide for the postage stamps for the letter writing of the Tax Collector, Will you kindly give this matter your attention as I want to be straight about it."

Replying to this communication, I beg to advise that while Section 661, of the General Statutes, of 1906, provides for the furnishing by the County Commissioners of the books of record, blank books and stationery for the various departments of the County, yet it is silent upon the question of providing postage stamps for such officers. Therefore, there appears to be no provision of law authorizing the County Commissioners to furnish such postage to Tax Collectors.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

APPEARANCE BOND—RECOURSE OF SURETIES AFTER ESTREATURE.

Tallahassee, Fla., Febraury 4, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your communication of the 2d instant, with the following enclosures, letter from W. H. Cox, State Health Officer to you, under date of January 30th, 1918, letter from O. W. Lane, of Brooksville, Florida, to Dr. W. H. Cox, State Health Officer, Tampa, Florida, under date of January 26th, 1918, and letter from Z. Bass, of Kissimmee, Florida, to Mr. O. W. Lane, dated June 29th, 1917. I note that you desire to be

advised as to the law regarding the subject matter of these several communications.

I assume from reading the letters above mentioned that Mr. William Fortenberry, had either been bound over by a committing magistrate or indicted for some criminal offense, and was allowed to give bond for his appearance at the next term of court. That Mr. O. W. Lane, became surety on this bond. That at the next term of court Mr. Fortenberry failed to appear, owing to the fact that he was a soldier and had been sent to the Mexican border for service, and was there when the term of court convened at which he was to appear. That under these conditions his bond was estreated, and Mr. Lane was called upon to pay the same.

It now appears that Mr. Lane feels that inasmuch as Fortenberry was in the service of the Government by reason of which he could not cause him to appear at court, that he should have some relief from the payment of the bond, and invokes your aid in this behalf.

If the bond was estreated as provided by law which is governed by Section 3948 to 3954 inclusive of the General Statutes of Florida, 1906, the only way that any relief may be offered Mr. Lane is by the Board of Pardons or by Legislative enactment. Section 12 of Article IV of the Constitution of Florida provides as follows:

"Section 12. The Governor, Secretary of State, Comptroller, Attorney-General, and Commissioner of Agriculture, or a major part of them, of whom the Governor shall be one, may, upon such conditions and with such limitations and restrictions as they may deem proper, remit fines and forfeitures, commute punishment, and grant pardon after conviction, in all cases except treason and impeachment, subject to such regulations as may be prescribed by law relative to the manner of applying for pardons."

Under the above provision of our Constitution the Board of Pardons could, if it saw fit, remit this forfeiture upon

a proper application being made, provided the same has not been paid into the fine and forfeiture fund of the County.

The Legislature could pass an Act providing for the refunding to Mr. Lane the amount paid by him as surety upon the bond of Fortenberry.

If my assumptions as set out herein are correct, then what I have said above answers your communication.

I am returning enclosures herewith.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

OFFICERS — CHARGES AGAINST, SHOULD BE
VERIFIED BY AFFIDAVIT.

Tallahassee, Fla., February 8, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol..*

Dear Sir:

In the matter of charges against the Okaloosa County Commissioners.

I wish to state that in my opinion it will be necessary for them to verify these charges by affidavits and certified copies of the records, so that you could serve copies of these charges upon the respondents.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COUNTY GUARDS—WOMEN NOT ELIGIBLE TO
APPOINTMENT AS HONORARY OFFICERS.

Tallahassee, Fla., February 18, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 16th instant enclosing letter from Mr. P. C. Eldrid, Clerk Circuit Court, Ft. Pierce, dated February 9th, to you with reference to the appointment of certain ladies as officers of the Vero Home Guard of Honor.

Replying to your communication, I beg to advise that I do not think that Chapter 7292, Laws of Florida, Acts of 1917, providing for the organization of County Guards provides for such appointments.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

INTOXICATING LIQUORS — CONFISCATED
LIQUORS OR WINES MAY NOT BE LAWFULLY
TURNED OVER TO HOSPITALS, ETC.

Tallahassee, Fla., February 18, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

Your communication of the 16th instant has been received, the same reading as follows:

"Enclosed please find a letter from Judge Sanders of

Miami, presenting a case of which I am not sure concerning the law. Will you kindly, therefore, look thoroughly into this matter as to whether or not I can issue orders protecting the wines, whiskey, etc., for the convalescents of these tubercular patients at the hospital and other places of detention."

Replying to your communication, I beg to advise that Section 17, of Chapter 7283, Laws of Florida, Acts of 1917, provides as follows:

"That no property rights of any kinds shall exist in said prohibited liquors and beverages when possessed, to be used for unlawful furnishings of distribution, and in all such cases the liquors and beverages and the vessels and receptacles in which such liquors are contained are hereby declared to be contraband and are to be forfeited to the State when seized and may be ordered and condemned to be destroyed after seizure by order of the Court that has acquired jurisdiction over the same, or order of the Judge or Court after conviction, when such liquors and such property named have been seized for use as evidence."

It will be noted that it is provided in the above Section that the liquors and beverages prohibited when possessed for illegal purposes are declared to be contraband and are to be forfeited to the State when seized, and that they may be ordered and condemned to be destroyed after seizure by order of the Court that has jurisdiction over the same.

While the wording of the Statute mentioned is not sufficiently clear to state specifically that the Court may order or direct that such liquors be delivered to the City Hospital and Dade County Farm Hospital for medicinal purposes, yet inasmuch as the provision with reference to condemnation and destruction of such liquors seem not to be mandatory, but within the discretion of the Court, and that the same provision provides for such liquors to be forfeited to the State, it would appear that

there is no inhibition against the Court making an order with reference to said liquors as he may decree is for the best interest of the citizens, not in conflict with the spirit and intent of the law.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

BAIL BONDS—DISCRETION OF CLERK OF COURT
IN ACCEPTING SURETIES ON SUPERSEDAS
BOND.

Tallahassee, Fla., February 18, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 16th instant enclosing joint letter from R. E. Hamrick, Otis R. Parker and F. M. Hemmings, Attorneys for George Wilson, of Okeechobee, Florida, dated February 12th to you, also copy of supercedas bond of George Wilson together with several affidavits from parties as to the financial worth of the sureties on the said supersedeas bond, and note your request to be advised as to the legal points involved in the matter of the refusal of the Clerk of the Court to approve said bond.

Replying to your inquiry, I beg to advise that Section 4048, of the General Statutes of Florida, provides that a supersedeas bond may be approved by the Clerk or by the Judge of the Court where the cause was originally determined. This Section further provides that the Clerk or Judge may require further proof of the sufficiency of

the sureties offered if he shall think proper. Where the sufficiency of the sureties is not doubted, or where proper proof is made of the sufficiency thereof, then it is the duty of the Clerk, upon presentation to him of the supersedeas bond, to approve the same.

From the affidavits attached to your communication, it would appear that the sureties offered on the supersedeas bond in question are sufficient.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

BONDS—LIABILITY OF SURETIES ON BOND OF
COUNTY OFFICER FOR A FORMER TERM.

Tallahassee, Fla., February 27, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 20th instant, relative to the matter of the liability of the sureties on the bonds of the late Tax Collector, T. D. White, of Washington County, with which you enclosed report of Marvin C. McIntosh, Assistant State Auditor, upon the amount which Mr. White was found to be short and analysis of the condition of his accounts at the time of the audit of his office.

I have examined the report of the Assistant State Auditor, and as stated in Mr. McIntosh's report the last bondsmen could be held for the entire amount, however, the bondsmen on the first bond are primarily liable for the amount of the shortage occurring during the time

of the existence of the first bond, and the last bondsmen are responsible for the amount of shortage shown to have occurred during the time of the existence of such bond.

It has been held by the courts that when an officer receives public money his sureties become immediately responsible for it, and that liability continues until he has legally disbursed it. The time when payment may be demanded is immaterial in fixing his liability. The demand if not complied with is only evidence of a default and of a breach of the bond. If an officer is reelected and gives a new bond the liability of the old sureties is transferred to the new ones unless it can be shown that a conversion or breach of the bond occurred before the new bond was given.

It appears in the instant case that the actual default for part of the funds which were found to be short at the time of the audit of this office occurred prior to the making of the new bond, and evidently under the holding in such cases as above mentioned the sureties on the old bond are liable for the amount found to be short during the time covered by such bond, and that the sureties on the new bond are liable for the amount shown to be short during the time covered by the last mentioned bond.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

SEARCHES AND SEIZURES—LAW GOVERNING
INTOXICATING LIQUORS.

Tallahassee, Fla., February 28, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your communication of February 28th, enclosing a letter from Mrs. Ruby Williams, with reference to the matter of the Sheriff of Franklin County searching her suit case when the train reached Apalachicola.

Replying to your letter beg to advise that Section 9, of Chapter 7284, Laws of 1917, provides that:

"All intoxicating liquors, wines or beer shipped, transported, carried, possessed, and, or, received in the counties or election precincts of this State which have or may hereafter vote against the sale of such liquors, wines or beer in violation of the provisions of this Act, may be seized by the sheriff or deputy sheriff of the county where such liquors are so shipped, transported, carried, possessed and, or, received. All such liquors, wines or beer so seized shall be taken by the seizing officer, and by him kept in some secure place until the same is disposed of by law. * * *"

The above section of law seems to be the only provision with reference to seizures under the said chapter. The right to search does not seem to be mentioned in this section, therefore, it occurs to me that whatever rights a sheriff or deputy sheriff have had heretofore to make searches still exist.

Section 3561 of the General Statutes provides as follows:

"Searches Without Warrant—It shall be the duty of

all sheriffs, deputy sheriffs, constables and police officers in their respective jurisdictions, and they are hereby authorized and empowered to enter any building, booth, tent or other place, or part thereof, with or without warrant, in which they have good cause to suspect that spirituous, vinous or malt liquors are held for sale, contrary to law, and to seize the same and arrest the parties so engaged in such sales, and if such liquors in such quantities as to confirm the belief of illegal sales of the same be found in the building, booth, tent or other place, the same shall be prima facie evidence of the selling of liquor contrary to law; Provided, however, that this law shall not be construed as to apply to persons keeping a reasonable amount of spirituous liquors in his private residence for private use."

This last provision of law sets out under what conditions searches may be made.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

ELECTIONS—SOLDIERS ABSENT FROM THE
STATE NO AUTHORITY TO VOTE.

Tallahassee, Fla., February 28, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I have your communication of the 27th instant which reads as follows:

"Attached hereto please find a telegram from Hon. Fred DeBerry of Orlando, which contains a request con-

cerning the convening of the Legislature to pass laws allowing the men in the war to vote. Is there not already such a law? Kindly let me have your opinion at once."

Replying to your communication I beg to advise that there is no law of this State authorizing persons who are beyond the jurisdiction of the State to vote in primary or general elections.

Chapter 7380, Laws of 1917, provides for persons who are qualified electors of this State, and are within the State on the day of any primary or general election, to vote at such point as they may be on such date upon the compliance with certain provisions mentioned in the said law.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

GAME—TRANSPORTATION OF GAME BIRDS FOR
SCIENTIFIC PURPOSES.

Tallahassee, Fla., March 7, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

My dear Sir:

I am in receipt of your communication of the 5th instant, enclosing letter from Mr. W. Montgomery with reference to the matter of his obtaining a permit to ship out of the State a few quail for breeding purposes, and note your request for my opinion as to the law upon this subject.

Replying to your inquiry, I beg to advise that there appears to be no provision of law providing for the grant-

ing of a permit for the transportation of game birds as is desired by Mr. Montgomery.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

COUNSEL OF DEFENSE—NO AUTHORITY FOR
COUNTY COMMISSIONER TO APPROPRIATE
MONEY FOR COUNCIL OF DEFENSE.

Tallahassee, Fla., March 18, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 13th instant with reference to the matter of you having requested an appropriation from the Boards of County Commissioners of the several counties of the State of the sum of One Hundred Dollars each to be used for the National Council of Defense in this State, and note that you say—"My plan was to ask each County in the State, through their County Commissioners, to grant this \$100.00 either in money or note which would be discounted at the Bank for the same and when the Legislature met we would have the amount appropriated and returned to them plus the interest and the discount. If there is anything wrong in my doing this or complying with the request of the gentlemen in this letter kindly let me know."

This is apparently an emergency that has arisen since the last session of the Legislature, and one that was not anticipated by that body, consequently no special statu-

tory provision was enacted covering this matter. In view of these conditions, and in the absence of any law specially making an appropriation for such purpose, I know of no funds out of which the Board of County Commissioners could properly make such an appropriation.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

GUARDS—AMOUNT ALLOWED BAILIFFS AND
SPECIAL GUARDS OR DEPUTIES.

Tallahassee, Fla., March 27, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 26th instant, enclosing letter from Hon. D. F. Burnett, Jr., Clerk of the Circuit Court, Madison County, Florida, with reference to the matter of the payment of fifty special deputy sheriffs in the case of State v. Barton, et al., and note that Mr. Burnett has to say with reference thereto.

Replying to your inquiry, I beg to advise that under the provisions of Section 1683 of the General Statutes of Florida, Acts of 1906, it is provided that bailiffs may receive per day not more than \$1.25. This seems to be the only authority of law for paying bailiffs (deputy sheriffs).

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

LICENSES—COUNTY AND CITY NO AUTHORITY
TO COLLECT LICENSES FROM FISH DEALERS.

Tallahassee, Fla., March 28, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your communication of the 20th instant, enclosing letter from Hon. J. Asakiah Williams, Shell Fish Commissioner, to you under date of March 16th with reference to certain County and City officials collecting a license from persons as fish dealers, and requesting that you issue a circular letter with reference to this matter.

Replying to your communication, I beg to advise that Paragraph 13, of Section 14, Chapter 6877, Laws of Florida, Acts of 1915, provides as follows:

"The licenses provided by this Section being police licenses exacted by the State in the control of her own property, over which a police control is necessary, no county, city, town or municipality shall impose any further license tax than herein provided. This provision does not, however, prevent, State, County and Municipal tax on personalty and reality as now provided by law."

From the above provision of law, it appears that no County, City, Town or Municipality shall impose any license tax upon persons, firms or corporations engaging in the business of wholesale or retail fish dealers.

With reference to the matter of you issuing a circular letter to the various County Officers upon this subject, I beg to advise that it occurs to me that if the State Shell Fish Commissioner would notify all the County and Municipal Officers where any license has been by them heretofore collected of the law that such action on their

part will not occur again. However, I see no objection to you writing a letter to such Officers calling their attention to the paragraph of law above mentioned.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

OFFICERS—NO AUTHORITY FOR AN OFFICER OR
EMPLOYEE TO CHARGE EXPENSES WHILE AT
HIS PLACE OF RESIDENCE.

Tallahassee, Fla., March 30, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your communication of March 30th, as follows:

"One of our State Auditors, Hon. E. I. Matthews, is very anxious to get an opinion as to whether or not a person engaged in work for one of the Boards of the State has a right to live in a certain place and to charge his expense account with Board while he is so living. In other words if a man resided in Tallahassee and did work for the State on a Board of any kind would he have the right to charge this Board money that he pays out every month to his expense account, or if he resided with his family in the city of Tallahassee, or any other city, would he have a right to charge his or his family's expenses to his expense account."

Replying to your communication I beg to advise that the question of whether or not an employee's or officer's expenses, who is employed by one of the official boards of the State or appointed by the Governor to a position

or office, the duties of which are prescribed by law or by the board, under whose direction or supervision such person performs his duties, is one which is either regulated by law or by the board employing such person.

In the case of Food, Drug and Fertilizer Inspectors, the law provides for a certain salary per annum and a sum not to exceed a certain amount per annum for traveling expenses while in the performance of his duties.

In the case of Supervisors of State Convicts and Convict Camps of the State, the law provides a certain salary per month and actual traveling expenses.

In the case of the State Health Officer, it is provided that he shall receive a certain salary per year together with his actual traveling expenses while engaged in the discharge of his duties as State Health Officer.

In the case of Board of Control, the law provides that the members of said Board shall be paid their actual expenses while in the performance of their duties and traveling to, from or upon the same, the account for which shall be paid quarterly.

In the case of the members of the State Road Department, it is provided that they shall receive no compensation therefrom but their actual, reasonable expenses incurred in the performance of their duties.

Under the provisions of law applicable to the several cases above set out with reference to officers and members of the said boards, it is my opinion that only such expenses as are clearly provided for under the law is a proper charge, and that from the facts as set out in your letter the charge for one's expenses while residing with one's family is not such an expense as was contemplated in the several provisions of law applicable to the cases enumerated above.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

OFFICERS—LIABILITY OF, FOR MISTAKES CAUS-
ING DAMAGES TO CITIZENS.

Tallahassee, Fla., April 6, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 3d instant, enclosing letter from Mr. Z. F. Hall to you under date of March 5th in which Mr. Hall desires to know whether the Clerk of the Circuit Court or his bondsmen are responsible for the errors made by such Clerk, and stating that nine mistakes in advertising and making a tax deed to him so that Court claims were made, and that he is out \$125.00 on account thereof.

Replying to your communication, I beg to advise that when a Clerk of the Court fails or refuses to perform or is negligent in the performance of the duties imposed upon him by law or is guilty of misconduct in office and injury has resulted from such conduct without contributory negligence on the part of the party complaining the Clerk is liable in damages therefor personally.

7 Cyc, page 228,
Mechem on Public Officers,
Section 664.

I would suggest that if Mr. Hall would consult with some local attorney to whom he could relate the whole facts in connection with the matter that he could get information as to his rights in the premises.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

RECRUITING LABOR—LAW GOVERNING IN THIS
STATE.

Tallahassee, Fla., April 18, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 17th instant, enclosing letter from R. D. Fryer, of Sumatra, Florida, to you with reference to the question of whether or not there is any law covering the matter of recruiting labor in this State to be removed to another State.

Replying to your inquiry, I beg to advise that Section 596gggg of the Compiled Laws of 1914 provides as follows:

"All persons, whether acting as individuals or as emigrant agents or the employer or employees of such agents, who shall seek to influence and by such persuasion cause the removal of any inhabitant from this State, or who shall seek to entice away from this State labor in this State by any representation whatever, shall be subject to a license tax of five hundred dollars in each county where such business is carried on."

In addition to the above provision of law Chapter 7273, Acts of 1917, provides for a County License Tax of \$2,000.00 to be paid for doing a similar business to that mentioned in the above provision of law, and provides for a fine not exceeding \$5,000.00 or imprisonment in the County Jail for not more than twelve months, or both, in the discretion of the Court, for the violation of its provisions.

If a person is recruiting labor in this State to be trans-

ported and employed beyond the limits of this State the two provisions of law above mentioned would apply.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

LABOR—NUMBER OF HOURS OF MANUAL LABOR
CONSIDERED A DAY.

Tallahassee, Fla., April 18, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 17th instante, enclosing letter from Mr. J. R. Woodbery, of Jamison, Florida, and note that it is desired to know whether or not there is an eight hour law in the State of Florida for laboring men.

Replying to the above inquiry I beg to advise that Section 2641, of the General Statutes of Florida, provides that "ten hours of labor shall be a legal day's work, and whenever any person employed to perform manual labor of any kind by the day, week, month or year renders so many hours of labor, he shall be considered as having performed a legal day's work, unless a written contract has been signed by the person so employed and the employer, requiring a less or greater number of hours of labor to be performed daily."

The above provision of law fixes the number of hours considered a day's work in this State unless varied by contract.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

OFFICERS—WHEN OFFICE MAY BE DEEMED
VACANT REQUIRING AN ELECTION.

Tallahassee, Fla., April 30, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

Your request for opinion duly received to which you attached communication requesting you to advise certain interested parties whether or not there will be a "vacancy" to be filled at the ensuing General Election (requiring nomination in the ensuing Primary) in certain County elective offices whose incumbents you have suspended by reason of conviction of crime, etc.

An answer to your inquiry is found in a proper construction to be placed upon the following constitutional and statutory provisions: Section 9, of Article XVIII, provides that "A general election shall be held in each county in this State on the first Tuesday after the first Monday in November, A. D. 1888, and every two years thereafter, for all elective State and County officers whose terms of office are about to expire, or for any office that shall have become vacant."

Section 15, of Article IV, provides "All officers that shall have been appointed or elected, and that are not liable to impeachment, may be suspended from office by the Governor for malfeasance, or misfeasance, or neglect of duty in office, for the commission of any felony, or for drunkenness or incompetency, and the cause of suspension shall be communicated to the officer suspended and to the Senate at its next session. And the Governor, by and with the consent of the Senate, may remove any officer, not liable to impeachment, for any cause above named. Every suspension shall continue until the

adjournment of the next session of the Senate, unless the officer suspended shall, upon the recommendation of the Governor, be removed; but the Governor may reinstate the officer so suspended upon satisfactory evidence that the charge or charges against him are untrue. If the Senate shall refuse to remove, or fail to take action before its adjournment, the officer suspended shall resume the duties of the office. The Governor shall have power to fill by appointment any office, the incumbent of which has been suspended. No officer suspended who shall under this section resume the duties of his office, shall suffer any loss of salary or other compensation in consequence of such suspension. The suspension or removal herein authorized shall not relieve the officer from indictment for any misdemeanor in office."

Section 6, of Article XVIII, provides that "The term of office for all appointees to fill vacancies in any of the elective offices under this Constitution, shall extend only to the election and qualification of a successor at the ensuing general election."

First, it will be observed that Section 9, of Article XVIII, requires the holding of an election for any elective office that shall have become "vacant." The question therefore arises—what is a "vacancy" within the meaning of the Constitution? It appears clear that there cannot be a *removal* without a concurrence of the Senate with the order of the Governor suspending. A removal occurs, under Section 15, of Article IV, as soon as and not before the Senate concurs.

A removal creates a vacancy absolute, while a suspension does not in that it must not only depend upon a future action of the Senate but it may also be terminated in either of three ways,—first, by reinstatement by the Governor; second, by refusal of the Senate to concur, and third, by the Senate adjourning without taking action. In this connection it may be stated that the power of the Senate in the present instance, unlike that

in reference to appointive offices, is confined solely to the question of removal—it having no power as to the appointment of a successor to an elective office.

Section 298 of the General Statutes of Florida provides the ten conditions under which an elective office shall be “deemed vacant.” It is observed that none of these has reference to an office the incumbent of which is suspended pending the convening of the Senate.

It is, therefore, my opinion that there is no “vacancy” within the contemplation of Section 9, of Article XVIII, which provides for the electing of persons to fill elective county offices which have become vacant.

In view of the fact that the suspension of certain officers referred to was based upon conviction of felony, I will direct attention to Section 5, of Article VI. That Section authorizes the Legislature to enact the necessary laws to *exclude* from every office of honor, power, trust, or profit, all persons convicted of bribery, perjury, larceny or of infamous crime, yet provides that this legal disability shall not accrue “until after trial and conviction in due form of law.” The legislation enforcing this Section is to be found in Section 295 of the General Statutes. The legal disability which *excludes* from office does not accrue until after trial and conviction by due form of law,” therefore, if it is made to appear that persons who have been convicted of felony have sued out a writ of error and obtained a *supersedeas* it would then appear that such offices referred to above could not be deemed “vacant” within the contemplation of the constitutional provisions and Statutes referred to until final judgment “by due form of law.”

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General

CHILD LABOR LAW—HAS NO REFERENCE TO
AGRICULTURE OR DOMESTIC EMPLOYMENT.

Tallahassee, Fla., April 19, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 18th instant, enclosing letter from Mr. L. M. Baker of Naragua, Florida, to you, and note that you desire to know whether the child labor law, of this State prevents children from engaging in agricultural labor and pursuits.

Replying to your inquiry I beg to advise that Section 24 of Chapter 6488, Laws of Florida, Acts of 1913, provides in part as follows: "Nor shall any of the provisions of this Act be considered as applying to children engaged in agricultural or domestic employment."

The above chapter is the law of this State upon the subject of the Regulating of the Employment of Minor children.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

COUNTY GUARDS—ONLY OFFICERS NAMED IN
THE STATUTE AUTHORIZED FOR A BAT-
TALION.

Tallahassee, Fla., April 25, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your letter of April 24th enclosing letter from Major William P. Smith, of Miami, as follows:

"Our Home Guard is branching out to such an extent and is really becoming of some military value, that I would like to have you create and appoint two additional officers, which officers I would like to nominate; Hon. Redmond B. Gautier, for First Lieutenant Judge Advocate, and Hon. John C. Gramling, First Lieutenant Ordnance Officer. We are trying to make our Battalion a complete and efficient unit, and to do this we need all of the officers that would go with a complete unit. * * *

"If these appointments meet with your approval and I feel quite sure that they will, will you be kind enough to notify me and direct the Secretary of State to notify each of the appointees direct."

Also a letter from Hon. John C. Gramling, of Miami, to you, upon the same subject. I note that you desire my opinion upon the questions submitted in these two letters.

Replying to your communication I beg to advise that Section 6, of Chapter 7292, Laws of Florida, Acts of 1917, provides as follows:

"The formation of companies and of a battalion of Guards in its composition of officers and non-commissioned officers shall conform, as near as possible, to the

formation of infantry of the National Guard of Florida, provided, however, there shall not be more than the following officers commissioned for each company and the battalion organized under the terms of this Act: For each company there shall be one captain, one first lieutenant and two second lieutenants, and, as a battalion organization, one major commanding, with a staff of one adjutant with the rank of first lieutenant, and one quartermaster with the rank of first lieutenant; one surgeon and one chaplain, each with the rank of first lieutenant; and such non-commissioned staff as the battalion commander may detail and commission.

"The commanding officer in each county shall be the supreme officer of the Guards and his orders and commands shall be obeyed by all officers and enlisted men of the organization. He shall also be reviewing officer of all summary court martial sentences."

The provisions of this section seem to limit the number of commissioned officers for each company and battalion organized under the provisions of this act. If the company and battalion have the quota of officers named in the section above quoted, it would appear that there is no authority to commission other officers.

I would suggest that in the event that there be any vacancies in any of the offices mentioned in Section 6 that Section 1 of said chapter provides the manner in which the names of those selected as commissioned officers be presented to the Governor to be commissioned.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SUNDAY—AUTHORITY OF CITIES TO PREVENT
OPENING OF BUSINESS HOUSES ON SUNDAY.

Tallahassee, Fla., May 22, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of May 21st enclosing letter from Mr. S. H. King, Mayor, of Homestead, Florida, to you with reference to the question of whether or not a Municipal corporation has the power to pass ordinances prohibiting the keeping open on Sunday of houses of business.

Replying to your communication I beg to advise that I think that the city or town council has authority to pass such ordinances as may be necessary and expedient for the preservation of public peace and morals, for the suppression of riots and disorderly assemblies, etc. Under such powers a municipality may in my opinion pass an ordinance covering the subject matter of Mr. King's letter.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

COUNTY PRISONERS, MAY BE HIRED OUT BY
COUNTY COMMISSIONERS TO DO FARM
LABOR.

Tallahassee, Fla., May 29, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

Your communication of this date received enclosing letter from Hon. E. E. McLin, United States Food Commissioner of Duval County, Florida, in which letter it is desired to know if the Board of County Commissioners of said County may hire out the County Prisoners of that County, to be worked under the control and supervision of the County Guards, in order to assist the farmers in that County in gathering the potato crop, which, because of the shortage of labor, due to war conditions, will be subject to ruin and great loss if not gathered within the next few days,—the County to be paid an agreed sum per day or barrel for the services of such prisoners.

Replying to the above will state that it is my opinion that the Board of County Commissioners has the discretionary authority to so hire out the convicts for the purpose stated. Such a course is not prohibited by law; in fact, it appears to be in accord with the present policy of the State to have the prisoners do road and farm labor. If their services were to be required for months instead of days it might be necessary that they should be let out on bids duly advertised, but this would hardly apply under the temporary emergency and conditions set out in Mr. McLin's letter.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

VACANCIES—ON COUNTY DEMOCRATIC EXECUTIVE COMMITTEE NOT FILLED BY GOVERNOR.

Tallahassee, Fla., June 3, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of May 31st enclosing letter from Mr. J. R. Miller, without place of residence given, in which he states that there is a vacancy in the Democratic Executive Committee of Lake County and asks you to appoint someone to fill this vacancy. I note that you desire to know whether you, as Governor, may appoint the County Executive Committeeman to fill the vacancy.

Replying to your communication I beg to advise that such vacancy as mentioned above cannot be filled by appointment of the Governor; it has to be filled by primary election.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

NAMES OF PERSONS—HOW NAMES MAY BE LEGALLY CHANGED.

Tallahassee, Fla., June 3, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your letter of the 1st instant, enclosing letter from Mrs. G. E. Oglesby, 133 Sanford Ave., Sanford, Florida, with reference to the question of having her name changed.

Replying to your communication, I beg to advise that Section 2007, General Statutes of Florida, 1906, provides as follows:

"The Circuit Court of this State shall have power and authority to change the names of persons residing in this State, upon a petition filled by such persons in any Circuit Court. Such petition shall state the name of the petitioner, and the name such petitioner desires to take; and the court shall decree that the petitioner's name be changed to the name which said petitioner desires, by which the said petitioner shall ever thereafter be known."

By following the method set out in the above statute it would appear the lady might have her name changed.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

STATE CHEMIST—TO JOIN IN SELECTING AN INDEPENDENT CHEMIST TO MAKE CHECK ANALYSIS WHEN MANUFACTURE DISSATISFIED.

Tallahassee, Fla., June 15, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

Your communication of recent date duly received in reference to controversy between Hon. R. E. Rose, State Chemist, on the one hand, and Hon. W. A. McRae, Commissioner of Agriculture and representatives of the American Agricultural Chemical Company on the other, involving the question of a check analysis to be made by some reputable independent Chemist of certain samples of

fertilizers numbered 4524 and 4525, which were forwarded to the Commissioner of Agriculture by C. F. Branan, a consumer, for analysis, in compliance with the law as laid down by Chapter 4893, Laws of 1901.

This office is also in receipt of a communication from the Commissioner of Agriculture involving the same matter. He requests to be advised if under the law and powers conferred upon him he is authorized to insist upon the State Chemist turning over the samples in question and joining with him and the Manufacturer in the selection of an independent Chemist to make a check analysis, the Manufacturer and consumer having made formal request, and a deposit having been made to cover costs.

Both of the communications mentioned can be covered by this reply and will be written with taht in view. In the outset, however, it is well to state that the disputed points may be classed more a matter of policy than a question of law, and as to the former this office has but little authority, but will make suggestions which it is hoped will be beneficial in the premises.

It appears from the correspondence between the parties involved that special samples were taken by a consumer, C. F. Branan, of Sanford, Florida, as provided in Section 9 of Chapter 4893, Laws of 1901 (Section 1272 G. S.) and forwarded to the Commissioner of Agriculture who requested the analysis by the State Chemist as therein provided. The result of the analysis was not satisfactory to the Manufatcurer in that such analysis indicated a shortage of certain guaranteed ingredients, thus having the effect of laying the Manufacturer liable to criminal prosecution, also confiscation of the fertilizer at the hands of State authorities and double damages at the hands of the purchaser. It appears from the correspondence attached to both communications that the Manufacturer, also the purchaser, Mr. C. F. Branan, requested that the unused portion of the said samples be delivered to

a referee Chemist—Mr. Branan waiving all right to the said samples—if he in fact had any after delivering them to the Commissioner of Agriculture with the request that he have the State Chemist to analyze them.

It appears that subsequent to the analysis above mentioned the State Chemist, through Mr. Wilson, his assistant, and S. W. DuPuy, Chemist for the Manufacturer, made a joint check analysis of the two samples in question in the Laboratory of the State Chemist with the latter's solutions, and obtained practically the same results as in the first instance. Mr. DuPuy claims that he informed the State Chemist at the time of making the analysis in his Laboratory that the analysis would not be binding upon the Manufacturer as he was working with solutions as to which he knew nothing of the accuracy and that his company would probably insist upon an umpire Chemist in case the results agreed with the former analyses. Mr. Rose insists that Mr. DuPuy stated that he would abide the results, and afterwards stated he was perfectly satisfied. These statements, of course, are in direct conflict, and involve merely a question of veracity as between Mr. Rose and Mr. DuPuy with which we are not concerned further than to state that whatever the agreement or intent was such check analysis in the State Laboratory with the solution used could not be said to be in full compliance with the law which requires the samples to be sent to a Chemist to be agreed upon by the Commissioner of Agriculture, the State Chemist and the party aggrieved.

The point raised by the State Chemist is that Section 9 of the statute taken alone makes no provision for a check analysis by an independent Chemist in case a party is dissatisfied. His position would require this Section to be construed independent of the other portions of the statute, whereas the rule has been well established that laws must be construed as a whole in order to give full force and effect to all of its provisions if that can be

done. It is not questioned, however, that Section 2 of the Law so provides for another Chemist where the samples are taken by an officer of the State. It would seem also that if a check analysis by an independent Chemist becomes necessary at all it would be more necessary in a case where the sample is taken "unofficially," as in this case, than when taken officially. The reason is obvious.

The rules and regulations adopted by the Commissioner of Agriculture July 1, 1917, among other things, provide that "the object of the fertilizer and stock feed law is: First, to protect the consumer from fraud," etc. "Second, to protect the lawful dealer who has fully complied with the law," etc. To permit a consumer to have his samples analyzed, resulting adversely to the guaranteed analysis of the Manufacturer, and to deny the Manufacturer a recourse by independent analysis, would be inconsistent with the apparent policy of the law and the regulations of the Commissioner of Agriculture, and might result in an injustice unless the State Chemist's analysis is infalable. Our system of jurisprudence recognizes the policy of arbitration, and the policy of aiding aggrieved manufacturers, dealers and consumers in adjusting their claims seem to have been the intent of the statute, also the regulations referred to above.

The communication of the Commissioner of Agriculture states that he desires to know the legal method to pursue in that the State Chemist in this case has refused formal requests to deliver to him the remainder of the samples in question to be analyzed by a Chemist to be agreed upon. The law in question seems to sustain the Commissioner of Agriculture: Section 1 places the State Chemist "under the general direction and supervision of the Commissioner of Agriculture." Under Section 9 of the law special samples are sent to the Commissioner of Agriculture and he is "authorized to require the State Chemist to analyze the same," etc. Section 15 gives the Commissioner of Agriculture sole authority "to establish

rules and regulations in regard to the inspection, *analysis* and sale of fertilizers * * * not inconsistent with the provisions of the act, as in his judgment will best carry out the requirements thereof."

It is thus seen that the responsibility for carrying out this law is placed upon the shoulders of the Commissioner of Agriculture as the head of the department. The State Chemist's position is that of a subordinate. In fact, his duties and powers under this phase of the law are purely that of an analyst, and his rights both as Chemist and an officer are fully protected against an unfair check analysis by being clothed with the power to join with the other two parties in choosing an independent analyst to be agreed upon.

Under the above construction, the conclusion is that the Commissioner of Agriculture does not part with the control or supervision of those parts of samples which are not used by the State Chemist in making up his analysis until the matter is finally disposed of according to the "direction" of the Commissioner of Agriculture "as in his judgment will best carry out the requirements" of the law. I, therefore, advise that the Commissioner of Agriculture, being the head of the department and having the supervision and direction in carrying out the provisions of the Act, is entitled to direct the course to be pursued in regard to the unused portions of these samples—they having served their purpose so far as the State Chemist is concerned, and in fact subject to destruction under the regulations after a three months period, and that the State Chemist should join in selecting a reputable independent Chemist.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

TAX ASSESSORS—DISCRETIONARY POWERS AS
TO FIXING VALUATION OF PROPERTY FOR
ASSESSMENT.

Tallahassee, Fla., June 26, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 24th instant, enclosing communication from Messrs. J. V. Burke and R. J. Patterson, Tax Commissioners, making complaint against Hon. E. B. Epps, Tax Assessor of Leon County, and note that you desire my opinion upon the questions involved.

The communication of the Tax Commissioners is as follows:

"We have today examined the assessment rolls that are being prepared by Mr. E. B. Epps, Tax Assessor Leon County, and notwithstanding the fact that we have requested him repeatedly to make his assessments in conformity with the understanding and agreement entered into between the Tax Assessors, Boards of County Commissioners of the State and the Tax Commission, we find that he is failing to do so. He has stated to us emphatically that he will not make any changes of consequence upon his last year assessment rolls—which assessment is entirely out of proportion to that of other counties in the State.

"The real estate valuations being placed upon the best lands of Leon County are less on an average than twenty-five (25) per cent., possibly, of the real value, and are very much below the value placed on lands of similar character in other counties of the State. It is unfair to the tax payers in other counties to allow this value

to be placed on property in Leon County, especially when we considered the fact that a very large proportion of the taxes paid in the other counties of the State is expended on the institutions located in the City of Tallahassee and Leon County.

"We ask that you take such steps at the very earliest moment possible to have this condition remedied. Whatever action is taken should be immediate as the roll for assessment is now being made, and action should be taken before the work goes farther and the time for completing the work grows shorter."

The law upon the subject as it relates to the duties of the Tax Assessor is found in Section 6 of Article VIII of the Constitution, and Chapter 5596, Laws of Florida.

Section 6, of Article VIII of the Constitution provides for a County Assessor of axes, and provides that the powers, duties and compensation shall be provided by law.

Chapter 5596, above mentioned, provides in Section 12 that the County Assessor of Taxes, with the assistance of such Assistant Assessors as may be nominated and appointed by the County Commissioners, shall between the first day of January and the first day of July in each year, ascertain by diligent inquiry the names of all taxable persons in his County, and all of their taxable personal and real property therein, on the first day of January of such year, and shall make out an assessment roll of all such taxable property.

Section 13 of said Chapter 5596 provides that the Tax Assessor shall set down in the assessment roll, in separate columns, to the best information he can obtain,
* * * "the full cash value of the personal property owned by or to be taxed to such person as provided by law."

Section 18 of said Chapter 5596 provides that "all personal estate liable to taxation, the value of which shall not have been specified under oath as aforesaid, shall be

estimated by the County Assessor of Taxes, at its true cash value, according to his best judgment and information, and his failure by neglect or refused to make such estimate shall be a cause of suspension by the Governor."

Section 20 of said Chapter 5596 provides that "The County Assessor of Taxes shall ascertain by personal inspection, where not already sufficiently acquainted therewith, the value of the lands and assess them at their full cash value * * *."

It appears from the above provisions of law that the County Assessor of Taxes is to assess all property both personal and real at its full cash value, as may be determined by him "to the best information he can obtain" as to personal property, and "ascertain by personal inspection where not already sufficiently acquainted therewith" in the case of lands.

Section 25 of said Chapter 5596 provides that the assessment roll shall be complete on or before the first Monday in July, in every year, "on which day such Assessors shall meet with the Board of County Commissioners at the Clerk's office * * * for hearing complaints and receiving testimony as to the value of any property, real or personal, as fixed by the County Assessor of Taxes, of perfecting, reviewing and equalizing the assessment * * *."

Section 24 of said Chapter 5596, provides that "The Board of County Commissioners shall have full power to equalize the assessment of the real estate or personal property in their respective counties, and for that purpose may raise or lower the value fixed by the County Assessor of Taxes on any particular piece of real estate or item or items of personal property."

The complaint presented to you by the Tax Commissioners, against the County Assessor of Taxes of Leon County, appears to have as its basis the alleged failure of the Tax Assessor to assess the real property of Leon County in accordance with an agreement of The Tax

Commission, the Tax Assessors and the Board of County Commissioners of the several counties of the State, which, as I understand, in effect was to make assessments on a fifty per cent. valuation.

The action of the Tax Commission, Tax Assessors, and Boards of County Commissioners in entering into such agreement had no foundation in law and was in conflict with the specific provisions of law vesting the discretion in the Tax Assessor to fix the valuation of property both real and personal in the manner provided in the provisions of law hereinbefore set out, and so far as such agreement is concerned a failure to abide thereby would not involve the Tax Assessor in any legal way. The law provides for an assessment at a full cash value, and the County Tax Assessor is vested under the law with judgment to exercise in determining such value.

Under the decisions of our Supreme Court, the presumption is that those administering the laws have properly discharged their duty, and without misconduct, until the contrary appears. See *Montgomery v. State*, 53 Fla. 115.

In the case of *Tampa v. Kaunits*, 39 Fla. 683, it is held that an Assessor cannot delegate the exercise of his official discretion in making the assessment.

Therefore, when the County Assessor of Taxes fixes, in the manner provided by law, the valuations of real and personal property he is presumed to have properly performed his duty, and exercised his official discretion to the best of his judgment.

The complaint as contained in the letter of the Tax Commissioners, above quoted, sets out what they think is an error of judgment on the part of the Tax Assessor of Leon County in placing valuations upon the real property of said County, but under the law the Tax Assessor is the only officer vested with this duty, and as I understand the law, not until the Board of County Commissioners meet on the first Monday in July as a Board of

equalizers, does the law provide for any review of his judgment in the matter of assessments of property.

In my opinion the above quoted communication from the members of the Tax Commission does not specifically set forth that the said Tax Assessor, Hon. E. B. Epps, has abused his discretion under the law in assessing property in Leon County, Florida.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

STATE ATTORNEYS—AUTHORITY TO APPOINT
DEPUTY STATE ATTORNEY.

Tallahassee, Fla., June 27, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your communication of the 26th instant, enclosing letter from Hon. M. A. McMullen, State Attorney, in which he states that he had been considering very seriously the matter of enlisting for service in the United States Army, but before doing so he wishes to know if he can get leave of absence from his office as State Attorney in accordance with the provisions of Chapter 7393, Acts of 1917, Laws of Florida.

Replying to your communication, I beg to advise that under the provisions of said Chapter only those officers who are authorized under the law to appoint deputies may obtain leave of absence as desired by Mr. McMullen. There being no provision of law for the appointment of a Deputy State Attorney, I do not think that the pro-

visions of the Chapter mentioned are sufficiently broad to permit Mr. McMullen to obtain a leave of absence.

Very respectfully,

VAN C. SWEARINGEN,

Attorney General.

OFFICES—ONE MAY AT THE SAME TIME HOLD THE OFFICE OF SUPERVISOR OF REGISTRATOR AND CLERK OF THE COUNTY JUDGE'S COURT.

Tallahassee, Fla., July 5, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

Your communication of the 2d instant duly received which reads as follows:

"Enclosed please find a letter from Mr. Carl Helmer, Jr., who says that he was elected Supervisor of Registration by a large majority, but I note from his stationery that he is Clerk of the County Judge's Court. Can he hold both of these offices at the same time? Please let me know at once."

Replying to the above, will advise that while Section 2647 of the General Statutes provides that every County Judge shall have power to appoint a Clerk of his Court, who may exercise all non-judicial functions which the County Judge may perform, yet I do not think the office of Supervisor of Registration and Clerk of the County Judge's Court are such as would be prohibited as against holding or performing the functions of more than one office under the Government of this State within the con-

templation of Section 15, of Article XVI of the Constitution. In fact, the position of Clerk of the County Judge's Court could not be deemed an office within the meaning of the Constitution which provides that all officers shall be appointed by the Governor, or elected by the people. Also, there is a rule of law well settled that where a person accepts an office while holding another he automatically vacates the latter,—so in either case you would be justified in commissioning Mr. Helmer, Supervisor of Registration of Dade County.

Respectfully submitted,

VAN C. SWEARINGEN,
Attorney General.

OFFICERS—AUTHORITY OF GOVERNOR TO
GRANT LEAVE OF ABSENCE TO STATE
GEOLOGIST FOR OVER THIRTY DAYS.

Tallahassee, Fla., July 5, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

Your communication of the 2d instant duly received as follows:

"Enclosed please find a letter from Mr. E. H. Sellards, State Geologist, asking for a leave of absence for seven months from his work as State Geologist in the State of Florida without pay to accept an invitation to work this length of time in the State of Texas. As I have never granted any officer so long a vacation and am not posted as to my powers in regard to a vacation of this length I ask you to go thoroughly into the legal status of the

case and see whether I can allow said vacation of seven months to him or not."

Replying will state that Section 299 of the General Statutes reads as follows:

"ABSENCE FROM STATE OF CERTAIN OFFICERS.—When any administrative officer of the executive department shall desire to absent himself from the State he shall be permitted to do so upon notifying the Governor in writing of such intention, but he shall return to the State and to the performance of his duties whenever requested by the Governor to do so, and upon his failure so to do the Governor may declare his office vacant and may fill the same as provided by law."

The above statute appears to clothe you with power to grant this request of the State Geologist.

The reasons that Dr. Sellards gives in the letter to you, which is attached to your request for an opinion, for making this request are as follows:

"As mentioned to you in conversation a few weeks ago, there is open to me the opportunity of undertaking geological work for the State of Texas. In thinking this matter over it has seemed to me that temporary service in that state would be of very considerable aid to me in the work that I am doing in Florida. As you know Texas and Florida are in the same large belt of Coastal Plains country; and the formations there have certain similarities to those in this state. Texas is a large producer of petroleum. A part of the Florida survey work on which I hope to issue a report within the next year relates to the possibility, if there is a possibility, of getting petroleum within this state. This report is intended to encourage drilling test-wells for oil where the conditions appear promising, if any such localities are found, and to advise against drilling test-wells where conditions are not promising. Experience in the petroleum fields of Texas where there is a degree of similarity of surface conditions could not fail to give increased confidence in

the advice that the State Geologist gives on this subject. There are other minerals also, as sulphur deposits, which are found in Texas and may not unreasonably be sought for in Florida. It is difficult to work out fully the geology of Florida because the land is so nearly level and so few of the strata are exposed. In all of this work it is an advantage to have as much experience as possible with geologic conditions in other states where conditions are similar.

"In view of these facts and in the beliefs that it will be to the interest of better service to this State, I beg to ask, if it is practicable, to be allowed a leave of absence, without pay, from my work as State Geologist, for a period of seven months from September 1, 1918, to March 31, 1919, the whole of this time to be spent in geological work for the State of Texas. If this request is granted I shall then make plans for the continuance of the work in Florida for this period of time in such a way that the interests of the State will not be neglected during my absence. The plan would include the continuance of the work that is now being done by Mr. H. Gunter, Assistant on the Survey, and in addition certain special investigations which I should arrange for subject to your approval.

"On September 1, 1918, I shall have given fourteen years continuous service to scientific work in Florida: Three years as Professor of Geology and Zoology at the State University, and a little more than eleven years in the office of State Geologist. I believe that you will agree that seven months is not a long absence from work that has gone on continuously for that length of time, and that the request for leave without pay, for study of geologic conditions elsewhere is not asking as much as though it were a request for absence for some other purpose. Immediately upon my return I shall expect to complete and issue the report to which I have referred relating to geologic conditions in Florida and their bearing upon the possibility of the presence of oil."

The statute quoted above in my opinion gives you authority and discretion to grant the request of Dr. Sellards.

Respectfully submitted,
 VAN C. SWEARINGEN,
 Attorney General.

COUNTY GUARDS—OFFICERS OF MAY BE REMOVED BY GOVERNOR.

Tallahassee, Fla., July 8, 1918.

*Hon. Sidney J. Catts, Governor,
 Capitol.*

Dear Sir:

I am in receipt of your letter of June 29th, enclosing letter from Mr. Charles M. Jones to Mr. L. C. Noyes, Jr., Second Lieutenant, Lakeland, Florida, with reference to certain conduct of Mr. Noyes as Second Lieutenant of the Company of County Guards of which Mr. Jones is Captain. I note that you desire to know whether or not in military affairs the evidence submitted to the Governor for removal of officers must be sustained by charges sworn and subscribed to before officers using the seal as in the case of civil officers; also whether the fact that this officer becoming drunk and using vulgar and indecent language is sufficient to remove him.

Replying to your communication I beg to advise that under the provisions of Chapter 7292, Laws of Florida, Acts of 1917, providing for the organization of County Guards, it is provided in Section 3 that "A commissioned officer may be discharged * * * by the Governor and shall be discharged upon the recommendation of the Com-

manding Officer by the Governor." Mr. Noyes being a commissioned officer it would seem that he would come under the provisions of law above quoted.

Whether or not it can be considered that the letter of Mr. Jones to you and the copy of his letter to Second Lieutenant Noyes is a recommendation to you for his discharge is not clear.

It appears from the provisions of law above quoted that upon the recommendation of the Commanding Officer, the Governor shall discharge such commissioned officer.

Respectfully submitted,
VAN C. SWEARINGEN,
Attorney General.

COUNTY GUARDS—BOND EXECUTIVE FOR
RIFLES.

Tallahassee, Fla., July 9, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of June 26th with reference to the issuing of rifles to the County Guards of this State by the U. S. Government, and note that you desire to know who should execute the bond to secure the issue of said rifles.

Replying to your inquiry, I beg to advise that it appears from Section 5, Special Regulations No. 37, Governing the Issue of Rifles and Ammunition to Home Guards, that where "a bond is required, it must be signed by the Commanding Officer of the State, Territory, or

District Guard of the State, Territory, or District of Columbia, for which use the property is issued * * *."

Therefore, the bond should be executed by the Commanding Officer of the County Guards for whose use the property is issued.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

STATE GEOLOGIST—AUTHORITY TO EMPLOY
ASSISTANTS.

Tallahassee, Fla., July 10, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 9th instant, enclosing communication from Dr. E. H. Sellards, State Geologist, with reference to the question of employing an assistant to make examinations and study of a number of samples from various wells in the State so that certain data may be obtained to be included in the permanent Geological History of our State, and note that you desire to know whether or not the employment of such assistance is authorized under the law.

Replying to your communication, I beg to advise that Section 1230-J, of the Compiled Laws of 1914 (Section 2, Chapter 5681, Acts of 1907) provides as follows:

"The State Geologist shall appoint subject to the approval of the Governor such assistance as he may find necessary to enable him to successfully, and with reasonable dispatch, accomplish the object of the survey, and

such assistance shall be entirely under the control of the State Geologist."

It would appear from the above provision of law that if it be deemed necessary by the State Geologist to employ such assistant as suggested in his letter to enable him to successfully accomplish the object of the geological survey work that upon recommendation, and approval by you, such assistance may be lawfully employed.

I am returning herewith enclosures.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

OFFICERS—AUTHORITY OF GOVERNOR TO
GRANT LEAVE OF ABSENCE TO STATE AT-
TORNEY EXTENDING OVER THIRTY DAYS.

Tallahassee, Fla., July 10, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

Your communication of the 29th ult., was duly received which reads as follows:

"Enclosed please find a letter from Mr. John C. Gramling, State Solicitor, who desires a two months' vacation from his place of work in South Florida. The longest vacation that I have ever granted to any state official is one month. As I am in doubt in regard to my constitutional right to grant a two months' vacation I respectfully ask that you give me your legal opinion concerning the same."

The communication of Hon. John C. Gramling referred to reads as follows:

"I wanted to leave the State for about two months, and am thinking of leaving about the first of July, to go to Colorado for a vacation. We do not have any terms of Circuit Court during that time, and consequently it will not interfere with the office of State Attorney. However, I would be pleased for you to write me that it is all right for me to leave for this trip."

Replying to the above will state that I know of no provision of our Constitution which would prohibit the granting of this request. We have a statute which would appear to authorize you in the exercise of your discretion to grant leave of absence even beyond thirty days. I have reference to Section 299, General Statutes, reading as follows:

"When any administrative officer of the executive department shall desire to absent himself from the State he shall be permitted to do so upon notifying the Governor in writing of such intention, but he shall return to the State and to the performance of his duties whenever requested by the Governor to do so, and upon his failure so to do the Governor may declare his office vacant and may fill the same as provided by law."

In this connection, it is well to remember that there are several duties required of State Attorneys under the statute of this State that may be performed when the Circuit Court is not in session, but I know of no reason why the State Attorney and the Circuit Judge could not agree upon some one to perform those duties in the absence of Mr. Gramling.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

INTOXICATING LIQUORS—CERTAIN NON-INTOX-
ICATING PROHIBITED UNDER CHAPTER 7283
LAWS OF 1917.

Tallahassee, Fla., July 11, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

Your communication of the 21st ult., duly received, enclosing letter from W. H. Dowling, Sheriff of Duval County; also the analyses of certain beverages submitted to Hon. R. E. Rose, State Chemist, with a letter of explanation of the said analyses from the latter,—the beverages analyzed and referred to being as follows:

- "No. 1788, Bis-mac;
- No. 1789, Cerva;
- No. 1790, Hytone;
- No. 1791, Kovar;
- No. 1792, Mecca;
- No. 1793, Quizz;

No. 1795, Danciger's Blackberry Flavor Cordial."

It is noted that you wish to be advised so that you may inform Sheriff Dowling whether or not there is a violation of the law in the sale of these beverages in dry territory, or counties or precincts which have adopted prohibition.

Replying will advise that the law in question is found in Section 1, of Chapter 7283, Laws of Florida, 1917, wherein it is stated that the term "prohibited liquors and beverages" shall include and be deemed to embrace the following:

"Third. All malted, fermented or brewed liquors of any name or description, manufactured from malt wholly or in part, such as beer, lager beer, near beer, porter or

ale, and all brewed or fermented liquors and beverages in which maltose is a substantial ingredient, whether alcoholic or not or whether intoxicating or not."

"Fourth. And any drinks, liquors or beverages containing one-half of one per cent. of alcohol or more by volume at 60 degrees Fahrenheit, or any other liquids or liquors manufactured or sold, or otherwise disposed of for beverage purposes, containing said amount of one-half of one per cent. of alcohol or more."

"Sixth. All liquors and beverages or drinks made in imitation of or intended as a substitute for beer, ale, wine or whisky or other alcoholic or spirituous, vinous, or malt liquors, including those liquors and beverages commonly known and called near beer."

It is observed that the third paragraph prohibits all near beer in which maltose is a substantial ingredient, whether alcoholic or not or whether intoxicating or not.

It is also observed that the fourth paragraph of said section prohibits beverages containing one-half of one per cent. of alcohol, or more, which, of course, would not include the beverages as analyzed by the State Chemist as neither of them exceed one-half of one per cent.

The sixth paragraph includes all beverages made in imitation or intended as a substitute, including those beverages commonly known and called near beer.

In the recent case of *Fine v. Moran* (Florida) 77 So. 533, the Supreme Court of this State held that the above provisions were lawful exercise of the police power, and that the Legislature regarded the traffic in non-intoxicating liquors described in Section 1 of the Act in question as a public evil "inasmuch as such traffic afforded a cover for traffic in intoxicating liquors, a subterfuge for the sale of the more harmful beverages; that to this extent, if no further, it hinders, if it does not altogether defeat, the enforcement of the laws against the sale of intoxicating liquors."

The Supreme Court further held: "We do not

judicially know that the liquors or beverages described by this Act are harmless, possess no deleterious ingredients, and may not be easily and conveniently used as a cover for the sale of, or traffic in, intoxicating beverages."

The conclusion is that whether or not any of the beverages mentioned are in fact used as a substitute for beer or near beer is a question of fact that should be determined by the circumstances involved in each case, and that no general or blanket rule can be laid down that would cover all instances of the kind in question. In other words, it is more a question of proof than of law.

It would seem that the State Chemist's analyses of all the beverages mentioned above would indicate that they are prohibited by the statute as being a substitute for beer, and it is my opinion that the Sheriff would be justified in instituting a prosecution if in his judgment these beverages are really being used as a substitute for beer.

Respectfully submitted,

VAN C. SWEARINGEN,
Attorney General.

PROBATION OFFICER—AUTHORITY TO APPOINT
ASSOCIATE PROBATION OFFICER.

Tallahassee, Fla., July 16, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 15th instant, enclosing letter from Hon. Ben Shepard, Clerk, Board of County Commissioners, Dade County, to you, to which

is attached resolution of the Board of County Commissioners requesting and recommending the appointment of an Associate Probation Officer of Dade County (Miss Frances Scott), and note that you desire my opinion upon the law involved.

Replying to your communication, I beg to advise that Section 2 of Chapter 6494, Laws of Florida, 1913, provides that the Governor may appoint in each County an Associate Probation Officer, therefore you are authorized to make the appointment as recommended by the Board of County Commissioners.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

CONSTITUTIONAL AMENDMENT—AUTHORITY OF
 THE LEGISLATURE OF 1919 TO ACT UPON
 FEDERAL PROHIBITION AMENDMENT.

Tallahassee, Fla., July 22, 1918.

*Hon. Sidney J. Catts, Governor,
 Capitol.*

Dear Sir:

Your communication of the 17th ult., was duly received, as follows:

"Attached hereto please find a letter from Mr. H. P. Caro, Pensacola, Florida, which presents a legal question as to whether or not the Legislature of 1919 can legally pass the ratification of the prohibition amendment to our Federal Constitution. I desire you to go thoroughly into this matter and give me your legal opinion."

That portion of Mr. Caro's letter referred to reads as follows:

"I made the ratification of the prohibition amendment to the Federal Constitution the predominant issue in my campaign, yet I found a number of voters contending that the 1919 Legislature could not legally act on it. Now, I suggest that immediately after the General Election in November that you call a special session of the Legislature to ratify this amendment, and if we then find we are unable to do so have the State law preventing the ratification of the amendment appealed to the U. S. Supreme Court in an effort to prove it an infringement on the Constitution of the U. S. in which case if we are successful we can ratify the issue in our regular session."

It is assumed that Mr. Caro had reference to Section 19, of Article XVI of the Florida Constitution, which reads as follows:

"No convention nor legislature of this State shall act upon any amendment of the Constitution of the United States proposed by Congress to the several states, unless such convention or legislature shall have been elected after such amendment is submitted."

The only provision of the Federal Constitution affecting the submission of proposed amendments for ratification by said Legislature is Article V, which provides that amendments proposed by Congress shall be valid "when ratified by the Legislature of three-fourths of the several states," and the only Federal Statute having reference to the subject is Section 303, United States Compiled Statutes, which provides as follows:

"Whenever official notice is received at the Department of State that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which

the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States."

It is observed from the above that proposed amendments are submitted by Congress to the respective states without any restriction or further direction of Federal authority respecting the means or manner of their ratification except as in this case that it be done by the Legislature; and that if legislative action results in a ratification, the result is certified to the Secretary of State of the United States, as provided above, who publishes the ratification when the number shall have reached three-fourths of the number composing the Federal Union.

The rule has long been established that Federal Courts will follow a state's construction of its statute and its constitution (163 U. S. 142-160 U. S. 386; 40 L. R. A. (N. S.) 393), and therefore no Federal authority, judicial or otherwise will modify or adversely review the State's action.

As to our State Courts' authority to pass upon the question, considerable inference may be drawn from the fact our Supreme Court, at the time when State Legislatures were required to elect United States Senators, held that it had no power to pass upon the legality of an election of a Senator by the Legislature (28 Fla. 441) their acts being political or legislative and not subject to review but final; also has held that the Legislature and not the courts determine whether notice of local and special legislation has been published (65 Fla. 160)—it being purely a legislative function.

It appears that the authority and power to act upon a Federal amendment has been placed solely within the discretion of the *Legislative* department of each State, and it would also appear that this discretion when reasonably exercised is not reviewable by any other branch of our Government.

Judge Westcott, speaking for the Supreme Court (14 Fla. 146) held that "The general rule is that for the erroneous exercise of either a judicial, legislative or executive *discretion*, there does not exist a remedy through the medium of judicial supervision and review. As to pure legislative and executive discretion, judicial officers, cannot, as a matter of course, control them." The following well known authorities support that view: Cooley's Constitutional Limitations 74; Black's Constitutional Law 83; 3 AM. & Eng. Ency. of Law 684; 12 Corpus Juris 883.

Our Supreme Court (61 Fla. 1) has also held that Section 19, of Article XVI does not relate to any executive power or duty of the Governor, and Justices of the Supreme Court are not authorized to interpret it on request of the Governor. It is not even essential that executive approval be placed upon a resolution of ratification.

There is a very noticeable absence of decisions touching the powers and authority of a State Legislature to act upon a proposed amendment to the Federal Constitution, which no doubt sustains the view that neither the United States nor State Courts have undertaken jurisdiction.

We have at least one precedent in this State, which arose under like conditions, recorded in Senate Journal 1911, page 1673, where a Senate Committee report was adopted which recommended that in view of said Section 19, of Article XVI, they should decline to act upon the Federal Income Tax Amendment, and stated that "in order to make the matter clear," they recommended "that the same be acted upon by the Legislature of 1913."

Legislatures, unlike courts, are not usually bound by precedents, and the members of 1919 may decide that that "Legislature have been elected after such amendment is submitted," within the meaning and contemplation of the said constitutional provision in that all save

sixteen out of one-hundred and nine members of the Legislature have been elected in an election held since the amendment was submitted.

It follows from what has been said that whatever opinion the Attorney-General may express at this time as to the legality of the ensuing Legislature's action or non-action upon the amendment, the Legislature would not be legally bound by it; in the exercise of a function independent of the other two branches of our Government, and to undertake to prejudge the matter might be considered an infringement upon their legislative powers and discretion; it would be otherwise, however, if the Legislature by resolution, as provided in Section 87, General Statutes, should request such opinion, and even then they would probably be bound only ethically.

It is quite clear also that if the Legislature should be called in special session immediately after the ensuing General Election, they would have the same authority to act as the regular session convening in April, but it would serve no useful purpose to so convene it if there is no power of review vested in any other department, State or National.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

CITIES AND TOWNS—GOVERNOR HAS NO AUTHORITY TO SUSPEND ORDINANCES.

Tallahassee, Fla., July 26, 1918.

*Hon. Sidney J. Catts, Governor,
 Capitol.*

Dear Sir:

I am in receipt of your communication of the 25th instant to which is attached a petition of numerous citi-

zens of St. Johns County addressed to you asking that you have suspended the law governing the impounding of stock and beef cattle in the town of Hastings during the continuance of the great war if the same be within your power, and I note that you desire to have my opinion upon the question involved.

Replying to your communication, I beg to advise that the Governor has no authority under the law to suspend the enforcement of a City Ordinance. It occurs to me, however, that if the petitioners would bring the matter to the attention of the City Council of the town of Hastings that body would doubtless give as much relief in the matter as they deem consistent.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

**AUTOMOBILES—OWNERS NOT ENTITLED TO
SPECIAL NOTICE TO PROCURE AND DISPLAY
LICENSE TAGS.**

Tallahassee, Fla., August 2, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your request for opinion of the 1st instant to which was attached a letter from Hon. W. A. Blount, Jr., County Solicitor of Escambia County, in which letter it is stated that some fifty names have been furnished him by the Sheriff of persons who are violating Chapter 7275, Laws of 1917, in that (1) some owners or operators of automobiles have only one metal number

plate displayed thereon either on front or rear, and (2) some have none at all; and the County Solicitor desires to be advised if he should not, under the circumstances, insert in the newspapers a notice giving those persons, especially of the first class mentioned, a reasonable time to fully comply with the law, and after that time file informations against all persons reported as having failed to comply.

Replying, will advise that it is my opinion that the law should be enforced in accordance with its provisions. The metal tags are furnished for the specific purpose of notifying the public, and officers especially, that a car is registered with the State Comptroller, and if that car or automobile fails to have the tag on the front and rear as provided the law is violated, for some persons may have one tag and some the other, and thus evade the law to that extent. If an automobile has only one or no tag it would be a matter of defense. Section 4 of the Act in question provides very clearly how a certificate of registration, or a number plate, may be replaced when mutilated, destroyed or lost simply by the payment of one dollar to the State Comptroller. All persons owning or operating automobiles must be presumed to know what the law is, and it is obvious that this office would not be authorized in advising that you would have authority to do other than to enforce the law as it is written.

As a matter of policy, the Sheriff or County Solicitor may be justified in determining by investigation whether or not a person in fact has a certificate of registration, and if he has he should be required to account for the metal plate, and it would depend upon the circumstances of each case as to whether or not a prosecution should be instituted under those circumstances.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

ADJUTANT GENERAL—AUTHORITY OF GOVERNOR TO WITHHOLD HIS APPROVAL OF REQUISITIONS OF ADJUTANT GENERAL FOR UNWARRANTED EXPENSES.

Tallahassee, Fla., August 5, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your communication of the 2d instant as follows:

"Enclose please find copy of letter I have written to General Christian in regard to the expense account for Stenographers and Clerk hire.

"Will you kindly review this business, and see whether or not it is exorbitant, concerning the fact that there is no National Guard in this State at this time, and that Major Anderson does most of the Military work in the State."

It is observed from the copy of your letter to the Adjutant General attached to the above communication that the Adjutant General has made requisition upon the Comptroller, subject to your approval, for \$400.00 for salaries of stenographers or employees, and that you state there is no National Guard in this State at this time, and that you also state that Major Edward Anderson is doing the larger part of the work of the Adjutant General, and that it is difficult to see just what services could be performed by that number of persons.

For your information and guidance, I am transmitting herewith the names and number of persons employed in the office of the Adjutant General as furnished by the Comptroller upon request of this office covering the requisition of the Adjutant General for November 1,

1916, November 1, 1917, and July 5, 1918, for previous monthly salaries respectively, from which it is observed that the same number of employees has been retained since the National Guards were called into National service as was employed before they were called into such service.

There was appropriated \$25,000.00 in 1917, for each of the two years intervening the sessions of the Legislature to be used in paying the "expenses of the National Guards of Florida, and Florida Naval Militia, including rent of armories, allowances, etc.," as has been the custom of the Legislature in making such appropriations. It is observed that the act does not limit the number of stenographers, clerks or employees that may be employed by the Adjutant General. It is apparent, therefore, that this office cannot determine whether or not the Adjutant General is exceeding his authority by making requisitions for useless expenditures.

It is provided, however, by Section 725, General Statutes of Florida, that the general current expenses of the Military Department shall be paid from said fund upon the requisition of the Adjutant General when "approved by the Governor." It would appear, therefore, that a part of the responsibility for determining whether or not the requisition for such expenditures are necessary and proper is placed by the statute upon you as Governor to be exercised as you may judge for the best interest of the State. In other words, if there are persons employed who are not in fact necessary to the proper administration of that department you would, under the law, have authority to withhold your approval from such items or give notice that such items are found unnecessary and would not receive your approval in the future.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

INTOXICATING LIQUORS—PERSONALLY TRANSPORTING QUANTITIES OF LIQUOR ACROSS THIS STATE TO ANOTHER STATE.

Tallahassee, Fla., August 5, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your communication of the 1st instant, enclosing a letter from Hon. J. C. Van Pelt, Sheriff of Escambia County, to you under date of July 29th, and note that you desire my opinion upon the question involved in his communication. Sheriff Van Pelt's letter reads in part as follows:

"A man loads his automobile with intoxicating liquors in Pensacola, purchased from a licensed dealer. He will leave Pensacola in his automobile destined for a point in Alabama, and sometimes for a point in Georgia. When he reaches a point en route in Escambia County, Florida, about ten (10) miles North of Pensacola, he passes through dry precincts. All that the drivers of such automobiles do in the dry precincts is to pass through . * * * Sometimes they stop to repair their automobiles or to obtain water or gasoline, and sometimes they go right through. In all the cases that I am inquiring about, the drivers of such automobiles have in their possession large quantities of liquors, more than a person is allowed to have in his possession in dry precincts; and, in all such cases, it is a *bona fide* shipment of liquor from Pensacola, Florida, to points in Alabama or Georgia."

As I understand your inquiry, you desire to know whether the transporting or having in one's possession intoxicating liquors as set out in the statement of facts above is a violation of the laws of this State, and if the Sheriff has the right to arrest the person transporting or having in his possession such liquors.

Replying to your communication, I beg to advise that Sections 3 and 4 of Chapter 7284, Laws of Florida, Acts of 1917, is the law applicable to the shipping and transporting of intoxicating liquors into counties or election precincts which have or may vote against the sale of such liquors, and reads as follows:

"Sec. 3. That it shall be unlawful for any express company, railroad company, or any common carrier or person to ship or transport into the counties or election precincts of this State which have or may hereafter vote against the sale of intoxicating liquors, wines or beer in such county or election precinct, any intoxicating liquors, wines or beer, or from a place in this State to any county or election precinct in this State which has or may hereafter vote against the sale of such liquors, in such county or election precinct, any intoxicating liquors, wines or beer for any person, firm, club, association or corporation, whether in original packages or otherwise, and whether intended for personal use or otherwise, except as hereinafter provided."

"Sec. 4. That it shall be unlawful for any person to personally transport without or within this State into counties or election precincts in this State which have or may hereafter vote against the sale of intoxicating liquors, wines or beer, whether the same is intended for personal use or otherwise, any intoxicating liquors, wines or beer in any quantity whatsoever, except as hereinafter provided."

Paragraph 2 of Section 5 of Chapter 7284, as amended by Section 1 of Chapter 7285 provides for the exception mentioned in Sections 3 and 4, and is as follows: "That nothing in this Act shall make it unlawful:

"For any person for the use of himself for the use of his own family residing with him, to personally transport to his own home, or to possess or to receive from any common or other carrier, shipped from without the counties or election precincts which have or may here-

after vote against the sale of intoxicating liquors, wines or beer, not exceeding one quart of intoxicating liquors or wine and not exceeding six quarts of beer or malt where said beer or malt does not contain more than five per centum of alcohol during any period of thirty consecutive days, or for any common or other carrier to ship or transport to any person in any county or election precinct in this State which has or may hereafter vote against the sale of intoxicating liquors, wines or beer for the personal use of such person, or for the use of the members of his family residing with him, not exceeding one quart of intoxicating liquor or wine and not exceeding six quarts of beer or malt where said beer or malt does not contain more than five per centum of alcohol during any period of thirty consecutive days."

Section 9 of said Chapter authorizes the seizure of all intoxicating liquors, shipped, transported or carried, possessed, or received in violation of the provisions of this Act, and reads in part as follows:

"All intoxicating liquors, wines or beer shipped, transported, carried, possessed, and, or received in the counties or election precincts of this State which have or may hereafter vote against the sale of such liquors, wines or beer in violation of the provisions of this Act, may be seized by the sheriff or deputy sheriff of the county where such liquors are so shipped, transported, carried, possessed and, or received."

The provisions of law above quoted, with reference to the shipping, transporting and possession of intoxicating liquors, wines or beer, in counties or election precincts which have or may vote against the sale of such liquors, seek to prevent the lodgment of such liquors in dry territory, except as is provided for in paragraph 2 of Section 5 above quoted, and should any such liquors remain in a county or precinct that had voted against the sale thereof, the carrier or person transporting or possessing

the same therein would be guilty of a violation of law and the liquor would be subject to seizure.

The facts set out by the Sheriff indicate that the transportation of the liquors in question is from the City of Pensacola, Florida, to some point in the State of Alabama, or in the State of Georgia; and that such liquors are in dry territory in this State merely on account of the route of transportation from Pensacola to Alabama or Georgia being through dry precincts in Escambia County, Florida. On these facts the liquors are not shipped into a county or precinct of this State which has voted against the sale of such liquors, but only transported through such precinct in the course of its continued transportation to its destination in another State.

Beyond question the respective states have the power to regulate the sale and shipment of intoxicating liquors within their borders, and the scope and extent of such regulations depend solely upon the law-making power of the State, provided they do not transcend the limits of the State authority by invading rights which are secured by the Constitution of the United States.

Paragraph 3 of Section 8, Article I of the Constitution of the United States provides as follows:

"The Congress shall have power 'To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.'"

The transportation of liquors from one State to another is commerce between the States, which, under the constitutional provision above quoted, delegates the power to Congress to regulate.

It is a well settled proposition that the right to send liquors from one State to another, and that the act of sending the same, is Interstate Commerce,—the regulation whereof has been committed to Congress by the Constitution of the United States;—and not until the enactment of the Webb-Kenyon Act, of March 1, 1913, Section

8739 U. S. Compiled Statutes, annotated, could the several states enact any valid regulations which would directly affect interstate shipments of intoxicating liquors, and such shipments may be affected by state law by reason of the provision of the Webb-Kenyon Act which takes away from interstate shipments of intoxicating liquors when shipped into prohibited territory their character of interstate commerce.

For State authorities to arrest a person transporting intoxicating liquors from territory which had not voted against the sale of such liquors into another State, when such transportation is continuous and no part of the liquors are consigned to or delivered in or disposed of or used or kept in any territory which has voted against the sale thereof in this State, would not, in my opinion, be warranted under the provision of Chapter 7284, laws of Florida, Acts of 1917.

If the transporting of intoxicating liquors into the States of Alabama and Georgia is prohibited in those states, the traffic as mentioned in the Sheriff's letter would be one for the authorities of such States to regulate.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

OFFICERS—LEAVE OF ABSENCE FOR MILITARY SERVICE.

Tallahassee, Fla., August 9, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your letter of the 8th instant from Hon. Ben Sheppard, Clerk Circuit Court, Miami, Florida, to you, dated August 6th, in which Mr. Sheppard makes application to you for leave of absence so that he may enlist in the military service of the United States, and note that you desire my opinion as to whether or not such leave of absence may be granted to Mr. Sheppard.

Replying to your communication, I beg to advise that the provision of Chapter 7393, Laws of Florida, Acts of 1917, provides for the granting of leaves of absence during the time an officer is in the military service provided such service shall not extend beyond the term of office of such officer in which event the office shall be filled by election at the expiration thereof. Section 4 of this Act provides that it shall only be applicable to such officers as are now authorized by law to appoint deputies. Under the provision of Section 1825 of the General Statutes of 1906 Clerks of the Circuit Court are authorized to appoint deputies for whose acts the Clerks shall be liable, and that said deputies shall have and exercise the same powers as the Clerks themselves.

Therefore, a Clerk of the Circuit Court being authorized under the law to appoint a deputy, it is my opinion that under the provision of Chapter 7393, above mentioned, that you would be authorized to grant the leave of absence requested by Mr. Sheppard.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

HEALTH OFFICER—TRAVELING EXPENSES
ALLOWED.

Tallahassee, Fla., August 9, 1918.

*Hon. Sidney J. Catts,
Messrs. Frecker, Earnest and Graves,
Members State Board of Health.*

Gentlemen:

Referring to the report of the State Auditor with reference to the State Board of Health, I beg to submit herewith my opinion as to what constitutes expenses authorized by law in the discharge of the duties of the State Health Officer.

Section 1127 of the General Statutes of Florida, 1906, provides as follows:

"1127. (780.) COMPENSATION OF MEMBERS OF BOARD AND HEALTH OFFICER.—The State Health Officer shall receive a salary of three thousand dollars a year, to be paid quarterly, upon his requisition, approved by the President of the Board of Health, out of the fund hereinafter provided, together with his actual traveling expenses while engaged in the discharge of his duties as State Health Officer * * *."

Under this provision of the law it would seem that the State Board of Health has no discretion in this matter whatever but is confined strictly to the language of the statute, and it is my opinion based thereon that only such expenses are authorized to be paid to the State Health Officer as are incurred as actual traveling expenses while engaged in the discharge of his duties as State Health Officer, and that the Board of Health, in my opinion, would not be authorized to approve any expenses incurred by the State Health Officer other than actual

traveling expenses incurred while engaged in the actual duties of his office.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

COUNTY SOLICITOR—DEPUTY SOLICITOR NOT
 AUTHORIZED TO PERFORM FULL FUNC-
 TIONS OF A SOLICITOR.

Tallahassee, Fla., August 23, 1918.

*Hon. Sidney J. Catts, Governor,
 Capitol.*

Dear Sir:

I am in receipt of your communication of the 10th instant, enclosing letter from Hon. J. E. Peacock, Solicitor of the Criminal Court of Record, Volusia County, Florida, to you as follows:

"Whereas I have recognized it as my duty and seen fit to tender my services to my Country during the perior of the present war;

"And Whereas, I have been duly accepted in the United States Marine Corps of the United States Government;

"And Whereas, Chapter 7393, General Acts of the Legislature of the State of Florida of 1917, provides for the appointment of Deputies, and Leaves of Absence in such cases;

"I therefore, in accordance with said Act, have duly appointed Hon. Jos. A. Scarlett as such deputy to perform the duties of the Office of County Solicitor of the Criminal Court of Record of Volusia County, Florida, during my absence, and while engaged in the Military Service of the United States.

"And hereby most respectfully ask your Excellency to grant me Leave of Absence as provided by said Act and forward same to me at your earliest convenience.

"Trusting this meets with your approval, I am,"

I note that you state this involves a question of law about which you are not satisfied, and that you desire my opinion upon the question involved.

Replying to your communication, I beg to advise that Chapter 7393, Laws of Florida, Acts of 1917, provides in Section 1, 2, 3, 4 and 5, as follows:

"Section 1. That from and after the passage of this Act, any county or State official of the State of Florida, subject to the provisions and conditions hereinafter set forth, may be granted leave of absence from his office, to serve in the volunteer forces of the United States, or in the National Guard of the State of Florida, or in the regular army or navy of the United States, when the same shall be called into active service of the United States during war between the United States and a foreign government.

"Sec. 2. When any such officer shall volunteer or be called into the service of the United States during war, the Governor shall, upon application being made by such officer, grant such officer leave of absence during the time he shall be retained in such military service, provided such service shall not extend beyond the term of office of such officer, in which event the office shall be filled by election at the expiration thereof.

"Sec. 3. Before applying for such leave of absence as above mentioned, such officer shall appoint a capable and competent deputy to take over and perform the duties of the office, and the bond of such officer shall be in full force during the remainder of his term of office, in addition to which such deputy shall be required to furnish good and sufficient bond in a sum of not more than one-half of the amount of the bond of the officer

appointing him as such deputy, for the faithful performance of such duties.

"Sec. 4. The provisions of this Act shall only apply to such officers as are now authorized by law to appoint deputies.

"Sec. 5. That any deputy qualifying under the provisions of this Act shall perform all of the duties that may devolve upon the officer appointing him, and he shall sign all official papers and documents in the name of the officer so appointing him as such deputy, and his said acts as such deputy shall in all respects be as binding as if performed by the officer appointing such deputy."

It will be noted from the provision of Section 4 of this Act that its provisions shall only apply to such officers as are now authorized by law to appoint deputies.

Under the provisions of Section 5 of this Act a deputy qualifying under the provisions of the Act shall perform all of the duties that may devolve upon the officer appointing him, and shall sign all official papers and documents in the name of the officer so appointing him as such deputy.

In the case of Solicitors of the Criminal Courts of Record, it is provided in Section 3880 of the General Statutes, 1906, as follows:

"The county solicitor may appoint assistant county solicitors, to whom shall be administered an oath to faithfully perform the duties of assistant county solicitor, and who shall have the same powers and perform the same duties as the county solicitor appointing them, and for whose neglect and default the county solicitor shall be responsible. A note of the appointment of an assistant county solicitor shall be entered upon the minutes of the court. An assistant county solicitor shall sign all informations and other papers filed or issued by him as such 'assistant county solicitor.' His compensation shall be paid by the county solicitor, and not by the county or State."

Section 28, of Article V, of the Constitution of the State of Florida relating to offenses triable in the Criminal Courts of Record provides as follows:

"All offenses triable in said Court shall be prosecuted upon information under oath, to be filed by the prosecuting attorney, but the grand jury of the circuit court for the county in which said criminal court is held may indict for offences triable in the criminal court. Upon the finding of such indictment the circuit judge shall commit or bail the accused for trial in the criminal court, which trial shall be upon information."

Therefore, it appears from the provision of this Section of the Constitution that all offences triable in the Criminal Courts of Record of this State are to be tried upon information under oath, to be filed by the prosecuting attorney.

This being true, it would seem that a County Solicitor cannot appoint such a deputy as is contemplated in the provisions of Chapter 7393, Acts of 1917.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COUNTY GUARDS—ENFORCE ATTENDANCE AT
DRILLS.

Tallahassee, Fla., September 16, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your letter of the 13th inst., enclosing letter from the Captain of the Hernando County Guards, in which he desires to know what methods may

be employed to enforce attendance at drills of County Guard organization, and if the laws governing National Guards is applicable to County Guards.

Replying to this communication, I beg to advise that the law applicable to National Guard organizations of this State, with reference to the enforcement of the orders of the commanding officer, and the discipline of such Guards is applicable to County Guard organizations.

By referring to my communication to you, under date of January 26th, 1918, the law applicable may be found

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

GOVERNOR—NO DUTIES TO PERFORM WITH
REFERENCE TO COUNTY LEGAL ADVERTISING.

Tallahassee, Fla., September 18, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your letter of the 16th inst., enclosing letter from W. R. Carter to you with referenec to the publication of legal notices of various kinds, and note the suggestions offered in Mr. Carter's letter, with regard to the publication of such notices.

Replying to your communication I beg to advise that Section 1727 of the Compiled Laws of Florida 1914 provides as follows:

"Official and legal advertisements relating to any proceedings in any Court in this State, and all legal notices and advertisements of Sheriff's and Tax Collector's, unless otherwise provided by law, shall be published in

the newspaper printed either wholly or in part in the County where such publication is required to be made."

Section 558 Compiled Laws of 1914 provides that the publication of the list of lands to be sold for unpaid taxes shall be published in some newspaper to be selected by the Board of County Commissioners, said newspaper to be published in the County.

It is my opinion that you as Governor have no duty to perform with reference to legal advertisements, so long as the provisions of law above quoted and mentioned are complied with.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

COUNTY GUARDS—NOT DUTY OF GOVERNOR TO
SIGN BOND FOR RIFLES FURNISHED BY
GOVERNMENT.

Tallahassee, Fla., September 20, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 16th instant, enclosing letter from Major-General C. C. Williams, Chief of Ordnance, Supply Division, War Department, Washington, D. C., with reference to you signing bond for the rifles and ammunition issued for the use of the County Guards of this State, and note that you desire my opinion as to the best way to handle this matter.

Replying to your communication I beg to advise that under date of September 14th I wrote you upon this subject as follows:

"Replying to your inquiry I beg to advise that the Legislature, not anticipating the many eventualities that might arise owing to the conditions that the war has occasioned, did not enact any law giving to the Governor such powers as would authorize him to do such things as might, in his judgment as Governor, be necessary as war measures.

"Under the general law the Governor is not authorized to execute a bond which would be binding upon the State, therefore any bond which you might execute as principal would only have the effect of a personal bond.

"I notice that under Section 5 of the Act of Congress authorizing the issuance of rifles and other property for the equipment of organizations of Home Guards, it does not provide that a bond *must* be given, but that 'before the issuance of any property a bond *may* be required * * *.' Also further on in the section it provides, 'if a bond is required,' etc. Under this provision of the Act it seems that the giving of a bond is not made mandatory. Therefore, I would suggest that communication be written to the Chief of Ordinance, Supply Division, War Department, setting out the situation as it exists and requesting that the requirement of a bond be deferred until the meeting of the next session of the Legislature, when appropriate action can be taken to enact such law as will authorize the making of the bond."

This letter sets out my idea of the situation and seems to answer your inquiry.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

OFFICERS—COPY OF CHARGES SHOULD BE FURNISHED FOR REPLY.

Tallahassee, Fla., September 23, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 21st instant, enclosing letter from Mr. M. Morgan, of River Junction, Florida, to you, to which he attached two affidavits, making charges against the Tax Collector of Liberty County.

Replying to your communication, I beg to advise that I would suggest that a copy of these affidavits be furnished the Tax Collector of Liberty County with the request that he make reply to you with reference thereto. After receiving the Collector's reply, you will be in possession of both sides of the question and will then be in a better position to take any action that the premises may warrant.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

PRISONERS—RIGHT OF GUARD TO CARRY CONCEALED WEAPON.

Tallahassee, Fla., September 24, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 20th instant, enclosing letter from W. H. Wright, of Bristol, Florida,

with reference to the question of his right as a convict guard to carry a pistol at night when not guarding convicts.

Replying to your inquiry, I beg to advise that there seems to be no statute upon the subject of convict guards carrying concealed weapons. Of course, it is generally understood that convict guards while guarding prisoners carry weapons, but it seems that it is a matter which has not been provided for by law. The provisions of Section 3262, Compiled Laws of Florida, 1914, which is upon the subject of carrying concealed weapons, exempts only sheriffs, deputy sheriffs, city or town marshals, policemen, constables, or United States marshals or their deputies.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COUNTY COMMISSIONERS—FAILURE TO RE-
QUIRE TAX ASSESSOR TO CLOSE UP BOOKS.

Tallahassee, Fla., September 30, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

I am in receipt of your letter of the 24th instant, as follows:

"In the disclosure of the shortage of approximately \$146,000.00 as brought out by affidavits of Assistant Auditor, M. C. McIntosh, in the examination of the accounts of Mr. Rast, former Tax Collector of Duval County, it is plainly shown in his report that the Board

of County Commissioners allowed said Rast to keep his books open for a term of some four or five years without closing said books but they would allow, for instance, the books of 1914 to remain open and hand out books of 1915 to him, allow the books of 1915 to remain open and hand out books of 1916 to him, etc., until he has today four or five books embracing the years from 1914 until 1918 all open and all unsettled with the County Commissioners.

I am, therefore, writing to you to ask you to give me your legal opinion as to whether or not this constitutes a foundation for non-feasance, mis-feasance and malfeasance in office to such an extent as that the Board of County Commissioners of Duval County could and should be removed from office on account of said malpractices.

"Will you kindly go thoroughly into this matter and if you desire call upon Mr. McIntosh and review the evidence which he shall submit to me so that I may see whether I have a right to summons the Board of County Commissioners before me and force them to answer said charges to my satisfaction as Governor, or remove them from office."

Replying to your communication, I beg to advise that Section 34, of Chapter 5596, Laws of Florida, Acts of 1907, provides in part as follows:

"Tax Collectors are required to make all collections on or before the first Monday in April, and on or before the first Monday in July they are required to make a final report and settlement with the Comptroller and County Commissioners."

Section 770, of the General Statutes of 1906, provides as follows:

"The County Commissioners of the several counties shall, at least once every three months, inspect the offices and records of the county judge, sheriff and clerk of the Circuit Court and other officers of their respective coun-

ties, and see that the law prescribing and regulating the duties of said officers are being fully complied with; and it shall be their duty to report to the Governor of the State any failure on the part of such officers to perform their duties."

Under the provisions of Section 34, of Chapter 5596, above quoted, it is made the duty of the Tax Collector to make his final report and settlement with the County Commissioner on the first Monday in July. If this it not done it would appear that when the County Commissioners under the provisions of Section 770, above quoted, inspect the office and records of the Tax Collector and see that the law with reference to the settlement to be made by the said Tax Collector has not been made, it would then be their duty, under its provisions, to report the same to the Governor.

The failure of the officer to perform a duty which is provided by law for him to perform would, without a sufficient cause, be non-feasance in office.

Whether or not the County Commissioner of Duval County have failed to perform any duty provided by law for them to perform is a question of fact of which I am not advised.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

PROBATION OFFICERS—NUMBER AUTHORIZED FOR EACH COUNTY.

Tallahassee, Fla., October 21, 1918.

Hon. Sidney J. Catts, Governor,
Capitol.

Dear Sir:

I am in receipt of your letter of the 12th instant, enclosing letter from Mr. J. H. Derryberry, Probation Offi-

cer, DeSoto County, with reference to appointment of certain Probation Officers, and note that you desire to know if you have authority to appoint the number requested to be appointed by Mr. Derryberry.

Replying to your inquiry, I beg to advise that Section 1208-f of the Compiled Laws of Florida, 1914, provides in part that the Governor may, upon the *request and recommendation* of the *Board of County Commissioners* appoint at least one officer of either sect in each County, who shall be known as the Probation Officer of the County for which he or she is appointed. I do not think that it was contemplated by the Legislature in enacting this law that such a number of Probation Officers as mentioned in Mr. Deryberry's letter should be appointed in one County. However, Section 1208-g of the Compiled Statutes, 1914, provides for the appointment of Associate Probation Officers of either sect who shall serve without compensation.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

ELECTIONS—AUTHORITY OF COUNTY COMMISSIONERS TO PLACE OFFICE ON ELECTION BALLOT WHICH WAS NOT INCLUDED IN NOTICE OF SECRETARY OF STATE UNDER SECTION 171 GENERAL STATUTES.

Tallahassee, Fla., October 22, 1918.

Hon. Sidney J. Catts, Governor,
Capitol.

Dear Sir:

Your request for an opinion, dated the 21st instant, received as follows:

"The State Auditor having found in an examination

of the books of Tax Collector Rast, of Duval County, a shortage of more than one hundred thousand dollars (\$100,000.00) due the State, and upon his report to me, I, as Governor, issued an order suspending Mr. Rast from the office of Tax Collector, pending the action of the Senate. On October the 16th, I received from Mr. Rast his resignation, and understand that Mr. Rast on the same date made application to the Board of County Commissioners of Duval County to have his name placed on the official ballot as a candidate to succeed himself in the office from which he stood suspended under the law while no action had been taken or contemplated by me.

"With the statement of the above facts before you, please advise me as follows:

"Does a vacancy in the office of Tax Collector of Duval County exist under the law, and should same be filled at the next General Election?

"Has the Board of County Commissioners of Duval County the right to place a name on the official ballot to be voted for for an office that has not been certified to them by the Secretary of the State to be filled at the coming General Election,"

Referring to the first question, will state that while we have no statute or provision of law in this State covering the question as to whether an officer may legally resign by making formal communication to the Governor, and while under suspension, without an acceptance of the Governor, yet the weight of authorities among the states, and possibly the general policy prevailing under our system of government, appears to support the view that an officer may resign unconditionally from an office at any time, even during suspension, and the same becomes effective without a formal acceptance by the Governor, or other constituted authority. Upon that point, the courts of this State might have a different view from that above expressed.

The question as to whether or not such a vacancy,

assuming that a resignation so made is sufficient to create a vacancy, should be filled at the next general election is likewise not covered by our statutes or Constitution. For example, Section 171, General Statutes, provides that the General Election shall be held every two years, at which time there shall be chosen such elective State and County Officers "whose term of office may then require an election to be held to fill such office," etc.

Section 176, General Statutes, provides that the Secretary of State shall make out and cause to be published "at least sixty days prior to the date of holding the election, in one or more newspapers printed at the State Capital at least once a week until the election, a notice stating *what offices and vacancies are to be filled* at such General Election in the State, and in each County and District thereof, and shall send to the Sheriff of each County a notice of the *offices and vacancies of each County to be filled* at such General Election by the qualified voters of his County, or any District thereof, and the Sheriff shall cause a copy of such notice to be published weekly in a newspaper printed in his County," etc.

The above Sections, 171 and 176, appear to be the only authority for placing the names of candidates on a ballot for any county office in which there is a vacancy to be filled.

Section 212, General Statutes, provides, among other things, that the Board of County Commissioners shall also cause to be printed upon such ballots the name of any qualified elector who has been requested to be a candidate for any county office by written petition signed by at least twenty-five qualified electors to vote in the General Election to fill said office, when such petition has been filed with them not more than sixty days, nor less than twenty day previous to the election.

The question naturally arises,—upon what legal or record authority would the Board of County Commissioners of a County be authorized to act where the Secre-

tary of State and the Sheriff have not given notice to the public that a vacancy exists in the office of Tax Collector to be filled at the General Election.

It is observed that the Secretary of State has no expressed authority under the Statute to issue and forward a notice of the vacancy to be filled after the sixtieth day prior to the Election unless the vacancy had occurred prior to the said sixtieth day and he had overlooked the matter or neglected to do so. Therefore, there would be an absence of authority for the County Commissioners to act upon a petition for the filling of an office which had not been declared one to be filled in a notice furnished by the Secretary of State, which seems to be the only legal record provided by law upon which the Board could act.

It is my opinion that the Board of County Commissioners have no authority provided by the laws of this State for the placing of an office in the Election unless the same is included in a notice published by the order of the Secretary of State under Section 176 of the General Statutes.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

OFFICERS—ELECTED TO FILL UNEXPIRED
TERM MAY ASSUME OFFICE UPON QUALIFY-
ING.

Tallahassee, Fla., November 14, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee Florida.*

Dear Sir:

I am in receipt of your letter of the 12th inst., enclosing letter from T. W. Johnson, of Bonifay, Florida,

stating that he was forwarding to Hon. H. Clay Crawford, his oath of office and official bond as Sheriff of Holmes County for the unexpired term of J. H. Mattox deceased and requesting that you send him the necessary commission and note your request for my opinion regarding this matter.

Replying to your communication I beg to advise that Mr. Johnson having been elected to fill the unexpired term of Mr. Mattox (deceased) he would upon qualifying be entitled to receive his commission and take charge of the office.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

OFFICE—MARRIED WOMEN—ELIGIBILITY TO
 APPOINTMENT TO OFFICE.

Tallahassee, Fla., November 14, 1918.

*Hon. Sidney J. Catts, Governor,
 Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 12th inst., enclosing letter from Mrs. Florence Murphy Colby, of Jacksonville, with reference to appointing her as a member of the School Board of Duval County and note that you desire my opinion in regard thereto.

Replying to your communication I beg to advise that under the opinion of our Supreme Court, Advisory Opinion to the Governor, reported in the 62 Florida Supreme Court Reports, page 1, it is my opinion that an adult unmarried woman who is a citizen and resident of the

State, may be appointed a member of a County Board of Public Instruction.

Inasmuch as the law requires every member of the Board of Public Instruction of the several counties of the State, elected or appointed to such office, to give a bond, and as married women are not authorized to execute bonds that are binding on them personally, unless made a free dealer under the statutes of this State, it is my opinion that a married woman, unless she has been made a free dealer as above mentioned, would not be eligible to appointment as a member of a County Board of Public Instruction.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

ELECTIONS—LEGAL EFFECT OF DEATH OF CANDIDATE AFTER BALLOT PRINTED AND ELECTION CALLED.

Tallahassee, Fla., November 30, 1918.

*Hon. Sidney J. Catts, Governor,
 Capitol.*

Dear Sir:

Your letter of the 21st instant duly received transmitting a letter from Hon. Wm. M. Taylor, Clerk of the Circuit Court of Manatee County, in regard to the eligibility of C. E. Haley as member of the Board of Public Instruction for said County.

It appears that on the 26th day of October preceding the General Election held November 5th that Hon. George T. Dickie died, after his name had been printed

on the General Election ballot as a candidate of the Democratic party for member of the Board of Public Instruction for Manatee County. The returns show that Mr. Dickie received 169 votes, and that Mr. Haley received 99. I assume that the 99 votes were written in the blank line as is provided on the ballot for the General Election. The correspondence referred to above also states that Mr. Dickie was voted for by persons not knowing he was dead.

Replying to the above will state that we have no law in this State taking care of the situation as outlined in the above inquiry. The general rule seems to be that where a person who has died shortly before an election received the highest number of votes, and the voters had no knowledge of this fact, the votes cast for him are so far of force as to prevent the election of the candidate receiving the next highest number of votes. It has been declared in a comparatively recent case, wherein the opinion contains an exhaustive review of the authorities, that the great weight of authority, English and American, is to the effect that votes knowingly cast for a candidate who cannot possibly exercise the functions of the office are thrown away. However, it may be that the law in this State providing for a blank line after the name of each office to be voted for in the General Election was intended, among other things, to cover this situation, and further, in view of the fact that it has not been customary so far as the records show in this State to call a special election to fill a county office which in this case the term would not begin until the first Tuesday in January, it would appear that unless there is some legal contest over the matter that you would be justified in issuing a commission to Mr. Haley upon his qualifying on the first Tuesday in January. I have less hesitancy in making this statement from the fact that in one of the exhibits attached to your request for an opinion it is

shown that the Canvassing Board of Manatee County formally requests that Mr. Haley be duly commissioned.

I would also state that of Mr. Dickie was a member of the Board when he died, and there has been no one appointed to exercise that duty, there is a vacancy which should be filled by appointment until the first Tuesday after the first Monday in January, 1919.

Respectfully submitted,

VAN C. SWEARINGEN,
Attorney General.

STATUTES—WHEN STATUTE MAY BECOME
OPERATIVE FIVE DAYS AFTER APPROVAL.

Tallahassee, Fla., December 6, 1918.

Hon. Sidney J. Catts, Governor,
Capitol.

Dear Sir:

Your communication of the fifth instant requesting an official opinion was duly received as follows:

"Will you kindly give me your official opinion as to when the law which prohibits the shipping of intoxicating liquors into this State, or from point to point in this State, becomes effective, the same having been signed on Wednesday, December 4th.

"The above Act is one which is commonly known as the Emergency Liquor Law which is to take care of shipments over and above one quart until January 1st."

In answer to the above will state that Section 8 of the Act in question provides as follows:

"That this Act shall become effective five days after its passage and approval by the Governor." The official

approval of the Governor endorsed upon the enrolled bill reads: "Approved Dec. 4, 1918, Sidney J. Catts, Governor."

The rule supported by nearly, if not all modern authorities is that in computing the time when an Act is to take effect the time shall be computed by *excluding* the date of the event, which in this case was the date the Act was signed by the Governor, from the time which is to be computed, and *including* the last day of the number constituting the specific period. Thus, if an Act is to become effective a certain number of days from and after its passage and approval it will go into operation immediately upon the expiration of five days not counting the day upon which it was signed. This doctrine has been approved by the Supreme Court of this State.

Therefore, it is my opinion that December 4th, the day on which the Act was signed by the Governor, must be excluded from the five days mentioned in the Act, and under this construction it would make the Act become effective from and after midnight Monday, December 9, 1918.

Respectfully submitted,
VAN C. SWEARINGEN,
Attorney General.

OFFICERS—HOLDING THE OFFICE OF COUNTY
JUDGE AND ENSIGN IN THE NAVY.

Tallahassee, Fla., December 19, 1918.

Hon. Sidney J. Catts, Governor,
Capitol.

Dear Sir:

I am in receipt of your letter of the 17th instant, enclosing letter from Hon. David R. Dunham, of St. Augustine, to you, which reads in part as follows:

"Not having been notified officially of the appointment of Peter R. Perry, Esq., as Judge of the Special Court of Record for St. Johns County, and as the said Peter R. Perry is still an Ensign in the Navy of the United States, I am addressing this letter to you for the purpose of ascertaining whether or not I am to continue as Judge until such time as Ensign Perry can properly receive a commission from you or if the office remains vacant until he is commissioned by you. I would appreciate your advice on this matter."

Replying to your inquiry, I beg to advise that from the statements in Judge Dunham's letter it would appear that the question to be determined is whether Mr. Perry who was appointed by the Governor, and confirmed by the Senate, is eligible to hold the office of Judge of the Special Court of Record of St. Johns County, he being an Ensign in the Navy of the United States, and if not whether the present Judge should continue in office until such time as a person who is eligible is appointed and qualified.

Section 2660 of the U. S. Compiled Statutes provides that the relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army, shall be as follows, lineal rank only being considered: "Ensigns with Second Lieutenants." A Second Lieutenant in the Army of the United States is a commissioned officer, therefore, if an Ensign in the Navy has the same rank he would be a commissioned officer in the Navy.

Section 15 of Article 16 of the Constitution of the State provides that "No person holding or exercising the functions of any office * * * under the Government of the United States * * * shall hold any office of honor or profit under the government of this State."

As Mr. Perry holds an office under the government of the United States he would, under the provisions of the State Constitution above quoted, be ineligible, in my

opinion, to hold the office of Judge of the Special Court of Record of St. Johns County.

Section 14 of Article 16 of the Constitution of the State provides that "All State, County, and Municipal Officers shall continue in office after the expiration of their official terms until their successors are duly qualified." Under this provision of the Constitution it is my opinion that Judge Duham would continue in office until such time as a person eligible to hold said office is appointed and qualified.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

STATUTES—STATE OFFICERS MAY NOT FOLLOW
CONSTRUCTION BY FEDERAL COURTS.

Tallahassee, Fla., December 24, 1918.

*Hon. Sidney J. Catts, Governor,
Capitol.*

Dear Sir:

IN RE: Chapter 7733, Laws of Florida, approved December 7, 1918, which is "An Act Regulating the *Transportation of Intoxicating Liquors* into Counties or Precincts of this State Where the Sale of Intoxicating Liquors are Prohibited and Providing Rules of Evidence and a Penalty for Violations of the Act."

In view of the fact that many officers of the State are making inquiry as to their duties under this law, since the decision of Judge Sheppard, of the United States District Court, wherein he granted an injunction causing the express companies to accept for transportation liquors, I feel that it is necessary for me to give you my views upon the subject.

In the opinion of Judge Sheppard, it appears that he took the position that this law was identical in principle with Chapter 7284, Laws of 1917, which our Supreme Court had declared invalid, and that such being the case he followed the decision of our Supreme Court. While it is a general rule of construction that Federal Courts will follow the highest court of the State in its construction of its own Constitution and Statutes, yet a State Court may refuse to follow the construction of a State Statute by a Federal Court *even by the Federal Supreme Court*.

The law above mentioned has not been passed upon by either a State Court of original or appellate jurisdiction, therefore, it cannot be said that Chapter 7733 is not a valid statute in so far as the courts of this State are concerned.

I cannot accede to the proposition that this Statute involves the same principle decided by our Supreme Court for the reason that it does not appear that our Court passed upon the question of the right of the Legislature to regulate the transportation of intoxicating liquors by common or other carriers which the Act in question solely seeks to do. Therefore, until such time as a State Court of competent jurisdiction has passed upon this Act declaring it invalid, it seems to me that it should be considered a valid law.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

Opinions to Secretary of State.

CIRCUIT JUDGES—TERM OF OFFICE OF CIRCUIT JUDGES BEGINS AND RUNS FROM DATE OF FILING OATH.

Tallahassee, Fla., June 6, 1917.

*Honorable H. Clay Crawford,
Secretary of State,
Capitol.*

Dear Sir:

I am in receipt of your inquiry as follows:

"Section 8, of Article V, of the Constitution, as amended, provides that Circuit Judges shall be appointed by the Governor and 'Confirmed by the Senate and shall hold their office for six years.' Heretofore commissions have been issued to read six years from their dates—the date of issuance being the day this office received the oather from the appointee. The failure of appointees to send in their oaths promptly after their confirmation by the Senate has caused the terms of some of the Judges to expire (according to the reading of their commissions) after the adjournment of the Senate.

"Will you please advise me whether I should issue Commissions to the Circuit Judges appointed by the Governor and confirmed by the Senate last week to read six years from the date of appointment, the date of confirmation, or the date this office receives the oath and commission tax from the appointees."

From the record of the appointments of the officers referred to it appears that the terms for which they were respectively apointed were to begin and run from the dates of the expirations of the terms of their predecessors, and the dates of such expirations are specifically mentioned.

This being the case, the terms of such appointees cannot run from the dates of the appointments or the dates of the confirmations, if it appears that the terms of office of the predecessors of such appointees had not expired when the appointments or confirmations were made, which I understand was the situation in practically all, if not all, of the instances referred to.

In this situation I would say that the proper course to pursue would be to follow the established custom mentioned in your inquiry and issue the commissions when the appointees to such offices qualify as required by law, taking care, of course, that the term of no appointee commences before the term of his predecessor expires so that there will be no conflict of authority between them.

Respectfully submitted,

T. F. WEST,

Attorney General.

ELECTIONS—WHEN PRECINCT REGISTRATION BOOKS OF PRIMARY SHOULD CLOSE.

Tallahassee, Fla., February 4, 1918.

*Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Florida.*

Dear Sir:

Your communication of the first instant duly received in which you call attention to the repugnancy between Sections 9 and 10, of Chapter 6469, Laws of 1913, as amended by Chapter 6874, Laws of 1915, which you state as follows:

“Section 9 of the Act requires Registration Books to be

open in each precinct in each County from the first Monday in March to and including the first Monday in April, and Section 10 of the same Act requires the Supervisor of Registration to keep the books open between March first and May first of each election year. Sections 9 and 10 require the Registration Books to be kept open at both precincts and County Seats during the period of time between the first Monday in March and the first Monday in April."

I note that you desire an opinion as to how to comply with the above provisions as a literal reading of this law would seem to indicate that there should be four sets of Registration Books.

Replying to the above, will state that in my opinion it was not the intent of the statute to require more than one "General Register" and one "Precinct Register" for each precinct in the State,—except where either one of such Registers is too small to contain all the names of the registered voters,—and to so hold would be reading something into the statute which it does not contain or contemplate.

To comply literally with the above Sections, 9 and 10, the Registration Books would have to be first opened at the Court House from the *first day* of March to the *first Monday* in March; then opened at the respective precincts and at the Court House from the first Monday in March to April first, which is impossible as a body or substance cannot occupy two places at one and the same time. These Sections are, therefore, in irreconcilable conflict with regard to that portion of the month of March from the first Monday to April first.

The rule of construction often announced by the Supreme Court of this State is that if the courts by fair, strict or liberal construction can find for two inconsistent provisions a reasonable field of operation, preserving the force of both, and can construe them together in harmony with the whole course of the Legislature, it is their duty

to do so. 71 Fla. 363. We have another rule which holds that statutes must be so construed as to effect the evident legislative intent, even if the result seems contrary to rules of construction and the strict letter of the statute. 55 Fla. 847. Also another rule that the intent of the statute is a vital part—the essence of the law—and the primary rule of construction is to ascertain and give effect to that intent. 59 Fla. 430.

It is obvious that it could not have been the intent to try to open the Registration Books at the County Seat during the *month of March* for the further reasons: (1) That the law provides only for one set of books for each precinct in the State, for otherwise it would necessitate the expenditure of thousands of dollars in supplying over eight hundred of such precincts; (2) Because Sections 14 and 15 of the law requires the elector to register in both the "General Register" and "Precinct Register" at the same time, and the registration number of the electors to be entered consecutively at the time of such registering,—thus the consecutive numbering would be impossible if the registration is being carried on in both places at the same time, thereby making it easy for the same person to register twice, thus defeating one of the main purposes of the law; (3) That it would not be consistent with the general policy and method of registration.

The above view is borne out by the following facts:

By referring to the House Journal of 1915, we find that House Bill No. 520, which subsequently became the Act in question, passed the House and was certified to the Senate, and there Section 9 of the Law was amended requiring the Registration Books to be opened by deputies in the precincts from the first Monday in March to the first Monday in April. The House subsequently concurred in the amendment. Section 9 in House Bill 520 as originally drafted and passed by the House provided that the Supervisor of Registration should go personally into each precinct and register electors between January

1st and February 28th, and Section 10 required him to keep the same books open at his office between March 1st and May 1st. The Senate amended Section 9 to require deputies to register and keep books open from the first Monday in March to the first Monday in April without apparently taking notice of the fact that Section 10 should have also been amended to conform thereto. Thus, Section 9, as amended, was the last expression of the Legislature upon the subject.

There is a well settled principle of law that the last expression of the legislative will is to be taken as the law, and it applies in case of conflicting provisions of the same statute. 36 Cyc 1130.

We find only one adjudicated case which is on all fours with the question in hand: *State v. Burr*, 16 N. D. 581, 113 N. W. 705, wherein it was held:

"In determining what the legislative intention was in passing a law whose provisions are contradictory on its face, the fact that the Journal shows that a positive provision, contradictory of a provision stricken out, was inserted in the act by an amendment adopted as the last act before it was passed by one body, will be accepted as controlling of the intent, and the seemingly contradictory provisions left in the act will be disregarded and deemed to be in the law through inadvertence."

In addition to the above, and supporting this view, the Supreme Court of this State in at least two cases has held that where the *last clause of a section of a statute* is inconsistent with the *first portion of the same section*, and this first portion conforms to the obvious policy and intent of the Legislature; the last clause, if operative at all, must be so construed as to give it an effect consistent with the first portion of the section, and the policy thereby indicated. 18 Fla. 557; *Hall v. State*, 39 Fla. 637; see also *State v. Bates* (Minn.) 104 N. W. 709, *Gibbons v. Brittenum*, 56 Miss 323.

It is, therefore, my opinion that the Registration Books

of the respective precincts should be held open in the precincts from the first Monday in March up to and including the first Monday in April, and that they should be held open at the Court House from the first Monday in April to May first. This will permit them to be open for practically 30 days in the precincts and practically 30 days at the Court House, and the Supervisor will then have from and after May first to enter the poll tax numbers of each voter and prepare the books for the election. Obviously, this was the real intent of the last legislative action upon the subject.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

CORPORATIONS—AMOUNT OF CHARTER TAX REQUIRED WHERE SHARES OF CAPITAL STOCK HAVE NO NOMINAL NOR PAR VALUE.

Tallahassee, Fla., March 6, 1918.

*Hon. H. Clay Crawford,
Secretary of State,
Capitol.*

Dear Sir:

Your communication of the 2d instant duly received as follows:

"I enclose herewith letter from Daniel C. Donohue, together with certified copy of Charter of the MOORE HAVEN CANNING CORPORATION, a Delaware Corporation, with 2,000 shares, which shares are without nominal or par value.

Please advise this office amount of charter tax required

by this State to issue Permit authorizing the said Company to transact business in this State."

I note that the main question involved in your inquiry is what amount of charter tax shall be required of this corporation.

It will be observed by referring to Section 2, of Chapter 5717, Laws of 1907, that it is provided you shall not issue a Permit allowing a Foreign Corporation to transact business in this State until you "shall have received from it for the use of the State a sum equal to that which the said corporation would have been required to pay as a charter fee if it had been incorporated under the laws of this State."

It will also be observed by referring to Section 2648, General Statutes, that all proposed charters for corporations for profit organized under the laws of Florida shall, among other things, provide and set forth "the amount of capital stock authorized, the number and par value of shares into which it is divided, and the terms and conditions upon which it is to be paid in."

By referring to the Fourth Section of the proposed charter of the MOORE HAVEN CANNING CORPORATION it is seen that it provides as follows:

"FOURTH. The total number of shares authorized is Two Thousand (2,000), which shares are *without* nominal or par value.

Such stock may be issued by the corporation from time to time for such consideration as may be fixed from time to time by the Board of Directors thereof."

The Fifth Section of the charter mentioned provides that the number of shares with which this corporation will commence business is Ten (10).

In the first place a corporation of this nature could not be organized under the laws of Florida by reason of the fact that the charter referred to provides no stock value whatsoever. Under the Fourth provision if you were to permit them to begin business,—for instance—on a mini-

mum charter fee they could then within a few days put their stock at a value of One Hundred Dollars per share and thus prevent the State from getting the Two Dollars per thousand as provided under the laws of this State, or a maximum charter fee of \$250.00.

It is my opinion that under the Statute of this State this Corporation may legally be admitted to do business, even though it appears that no such corporation could be organized under the laws of this State. However, it should not be admitted without requiring the maximum charter tax of \$250.00 in order that the State's interest as well as the citizens may be protected.

It is also noted that the eighth paragraph of the THIRD Section providing the nature of the business to be transacted states that it has the power to purchase and sell shares of capital stock of, or any bonds, securities or evidence of indebtedness created by any other corporation, or corporations, organized under the laws of this State, or any other State, country, nation or government, etc.

The above paragraph cannot be exercised in this State without complying with the Florida "Blue Sky" Law.

Enclosures herewith returned.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

AUTHORITY OF DEMOCRATIC EXECUTIVE COMMITTEE TO PLACE OFFICE OF TAX COMMISSION IN PRIMARY PENDING CONFIRMATION OF APPOINTEE BY SENATE.

Tallahassee, Fla., March 29, 1918.

Hon. H. Clay Crawford,
Secretary of State,
Capitol.

Dear Sir:

Your request for an official opinion dated March 26, 1918, duly received, which, omitting formal parts, reads as follows:

"I will thank you to give me your official opinion as to whether or not I shall certify the name of any candidate for the office of Tax Commission to succeed J. V. Burke, whose commission reads 'to be a member of the State Tax Commission in and for the State of Florida from the 7th day of September, A. D. 1917, until the first Monday in May in the next biennial session of the Legislature.'"

We assume that the question involved was brought about by the following: Section 28, of Chapter 6469, Laws of 1913, (the Primary Law) provides that the State Executive Committee may, by resolution, "declare for the nomination of candidates for other than elective office," and that upon the adoption of such resolution "the names of candidates for such offices and positions shall appear upon the official Primary Election ballot." On February 25, 1918, the State Democratic Executive Committee, evidently acting upon the above authority, adopted a resolution providing that the "candidates of the Democratic party shall be nominated for the following appointive offices, to-wit: * * *

11. For *two* State Tax Commissioners for the State of Florida.

It appears to have been the intention of the State Executive Committee to place in the coming Primary the office now held by Hon. J. V. Burke who was appointed when the Legislature was not in session,—there being only one other office on the Tax Commission to be filled by the Governor and the Senate of 1919.

In as much as the term of office written into a commission is not necessarily controlling it becomes necessary to determine whether or not there will be a *vacancy* to be filled by the Governor and the Senate at the next session of the Legislature.

Section 3, of Chapter 6500, Laws of 1913, which provides for the filling of vacancies in the offices of the State Tax Commission reads in part as follows: "In case of a vacancy it shall be filled by appointment by the Governor for the unexpired portion of the term in which such vacancy shall occur, subject to confirmation by the Senate. If such appointment be made when the Legislature is not in session, an appointee shall hold his office until the first Monday in May in the next biennial session of the Legislature, when, if such appointment is not confirmed by the Senate the office shall become vacant, and, on or before the last Monday in the same month, the Governor by and with the advice and consent of the Senate shall appoint a suitable person to fill such vacancy for the remainder of the term."

The last sentence of Section 3, of Chapter 6500, quoted above, is controlling as it does not appear to conflict with that portion of our Constitution which provides a method of filling vacancies in appointive offices: Section 7, of Article IV, provides: "When any office, from any cause, becomes vacant, and no method is provided by this Constitution, or by the Laws of this State for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission for the unexpired

term." In the instant case there is a mode provided "by the laws of this State for filling such vacancy," viz.: That portion of Section 3, of Chapter 6500, quoted above.

Said Section 3 of the above statute means that the power vested in the governorship is not a power to fill a vacancy in the office of Tax Commission for the last two years of an unexpired term without the sanction of the Senate,—that is, where a session of the Senate intervenes such appointment and the expiration of the term.

The records show that J. S. Blicht was appointed and confirmed during the session of the Senate of 1917 for a four years term, and subsequent to that date upon his resignation J. V. Burke was appointed when the Legislature was not in session to succeed him. That portion of his term intervening his appointment and the first Monday in May 1919 requires no concurrent action on the part of the Senate, and if on that date the Senate concurs in the said appointment the vacancy will be filled for the remaining two years; in other words for the two years from and beyond the said first Monday in May the statute requires an affirmative act of confirmation by the Senate otherwise his term on that date will expire by operation of law; and "on or before the last Monday of the same month the Governor by and with the advice and consent of the Senate shall appoint a suitable person to fill such vacancy."

At the time of holding the Primary and at the time of the convening of the Legislature Mr. Burke's authority to hold the office for the remaining two years of the term is subject, as stated, only to the affirmative concurrent action of the Senate "on the first Monday in May," 1919. The responsibility for such concurrent action authorizing the present appointee to continue in such office for the remaining two years was by resolution of the Democratic Executive Committee sought to be taken from the Senate and placed in the Primary to be evidenced to the Senate of 1919 by the result of the said Primary.

The accustomed purpose of placing an appointive office in the Primary being that of recommending nominees to the appointive powers, one of which is the Senate (also the Governor in case it becomes necessary to appoint another), it is, therefore, my opinion that you should certify as directed by the said resolution the name of any candidate for that office, for to hold otherwise it would be to say that the Committee had exceeded its powers which I am not prepared to do; and the fact that a person if he runs in the Primary does so upon a contingency that the next Senate may or may not confirm the present appointee, is not a proper subject of elucidation in this opinion.

Respectfully yours,
 VAN C. SWEARINGEN,
 Attorney General.

Opinions to State Comptroller.

BONDS—PROCEEDS OF ROAD BONDS MAY BE
 EXPENDED WITHOUT FORMAL CONTRACTS
 BASED ON BIDS.

Tallahassee, Fla., February 3, 1917.

*Honorable Ernest Amos, Comptroller,
 Tallahassee, Florida.*

Dear Sir:

I am in receipt of your inquiry as follows:

"I am enclosing herewith a letter from Hon. John C. Calhoun in reference to the expenditure of \$600,000, the proceeds of the sale of hard road bonds, for Taylor County, and in which he expresses a particular desire to

be advised as to whether or not the Board of County Commissioners could expend the \$600,000.00 without letting the contract to the lowest bidder and by buying teams, hiring labor, etc. You will notice from his letter that he seems to be satisfied as to other questions but that this particular matter, which I consider to be of vast importance, he desires an opinion and I most respectfully request that you advise me what course should be pursued, in the matter of the construction of the road, whether by contract or by the Board buying all the material, teams, etc., and doing the work."

This inquiry comes from the Clerk of the Circuit Court of Taylor County and relates to the powers of the board of county commissioners of Taylor County in dealing with the question of the construction and maintenance of public roads in their county.

The Attorney General is not authorized to officially advise county boards and, therefore, nothing that I would say in reply to your inquiry on this subject would be binding upon the county authorities or controlling upon them in dealing with this question. I don't mind saying, however, that if the board of county commissioners of the county, after a careful consideration of the question, consider it to be in the public interest to construct and maintain the public roads of the county under the supervision of a superintendent or engineer employed by them, they will be warranted in doing so, and that they are not required under the law to have this work done under contract.

Respectfully submitted,

T. F. WEST,

Attorney General.

OFFICERS—DUTY OF COUNTY OFFICERS TO SEE
THAT TAX LAWS INFORCED — ATTORNEY
GENERAL NOT LEGAL ADVISOR.

Tallahassee, Fla., February 3, 1917.

*Honorable Ernest Amos, Comptroller,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication as follows:

"I am transmitting herewith a letter from Hon. Cyril Baldwin, Tax Collector of DeSoto County, in relation to the provision of the law covering license taxes to be paid by automobile garages for keeping, storing, caring for, repairing automobiles, or other horseless vehicles, belonging to the public. See Section 7 of Chapter 6421 of the laws of Florida.

"I would be pleased to have your opinion as to whether or not the Tax Collector is correct in his construction of the law."

The Attorney General is not authorized to officially advise county officers and, therefore, nothing that I would say in reply to your inquiry would be controlling on the DeSoto County officers in the performance of their duties under the law relative to this matter.

The statute referred to fixes the tax imposed on the occupation mentioned. Whether or not one is engaged in this occupation is a question of fact. The officer whose duty it is to collect this tax must necessarily pass upon this question of fact in the first instance. If payment of the tax is refused and the tax collector is of the opinion that the law is being violated, he should see to it that the party violating the law is prosecuted for such violation. In this way the question can be passed upon by the court and the matter finally determined.

Respectfully submitted,

T. F. WEST,

Attorney General.

NO AUTHORITY CONFERRED UPON COMPTROLLER TO TRANSFER FUNDS IN STATE TREASURY BY WARRANT.

Tallahassee, Fla., February 7, 1917.

*Honorable Ernest Amos, Comptroller,
Tallahassee, Florida.*

Dear Sir:

Yours of the 1st instant has been received.

I note your inquiry as follows:

"I have before me, which I enclose, bill of Hon. J. C. Luning, State Treasurer, against the Shell Fish Commission aggregating \$265.15, approved for payment by the Shell Fish Commissioner, with the request that I draw warrant against the Shell Fish Fund in payment of the same, which I have declined to do, because—

"1. The bill on its face shows that it is not a proper charge against the Shell Fish Commission Fund, in favor of the State Treasurer.

"2. I am without authority of law for the issuance of said warrant.

"I must admit that the first objection, while a good one, is more or less technical.

"The purpose of this bill is to transfer \$265.15, in my judgment, erroneously paid by the Commissioner of Agriculture into the Shell Fish Fund to the General Fund.

"Section 28, Chapter 6532, page 452, Acts 1913, provides that the Commissioner of Agriculture shall charge and receive a fee for services provided for in the Act, and 'all fees paid to the Commissioner of Agriculture shall be covered into the General Revenue Fund of the State,' meaning, of course, that it should be paid directly into this Fund. Section 2, page 119 of said Act provides that all fees, etc., shall be faithfully accounted for, reported and turned over to the State Treasurer once in a quarter with a certificate of its correctness, etc.

"Section 14, Chapter 6877, page 169, Acts 1915, provides, that 'all *license* tax shall be collected by the Shell Fish Commissioner, etc., who will place the same to the credit of the Shell Fish Fund.' Mind you,—it says nothing about putting any fees in the Shell Fish Fund.

"Section 22 of the same Act says that all accounts, claims and bills of any nature against the fishing industry shall be examined by the Shell Fish Commissioner, shall be approved, etc., and a warrant drawn by the Comptroller on the State Treasurer against the Shell Fish Fund to pay such account, claim or bill.

"My contention is that this is not a proper account, claim or bill against the Shell Fish industry, and therefore, I am not authorized by any law to draw a warrant for its payment. Further, that these fees accumulating from time to time should be paid into the General Fund of the State quarterly, as provided by the Sections quoted, and not into the Shell Fish Fund. I have suggested to the Shell Fish Commissioner that it would be proper for him to pay over \$265.15 into the General Revenue Fund, and deduct this amount, which, of course, has heretofore been paid into the Shell Fish Fund, from his current remittances to the Shell Fish Fund, which will have the effect of adjusting these accounts without the necessity of drawing a warrant to accomplish this purpose. We have agreed to submit the matter to you, and, of course, whatever your idea is in the premises as to the law of the case will determine our differences of opinion."

To accomplish the purpose designed, that is to say, to transfer the amount named from one fund in the State treasury to another fund in the State treasury, it seems to be necessary, as a practical matter, to have you, as Comptroller, draw a warrant upon the State Treasurer against the fund in which the amount is now held in order that it may be withdrawn from this fund and paid into the fund in which it should have been paid originally.

Your warrant for this purpose necessarily withdraws,

from the treasury this amount, and the fact that it is to be immediately returned and placed in another fund in the State treasury does not change this result. The question presented, then, is whether or not there is any authority in law for your warrant, as Comptroller, which seems to be necessary to effectuate this purpose.

By Section 4, of Article IX, of the Constitution it is provided that:

"No money shall be drawn from the treasury except in pursuance of appropriations made by law."

In Section 103 of the General Statutes of 1906, defining the duties of the Comptroller relative to warrants issued by him on the State Treasurer, it is said that:

"Said warrant shall also state the name of the original creditor and the different transferees, *and refer to the particular act or resolution, and section thereof, on which it is issued*, and the head of expenditure to which the same is chargeable, and the amount allowed shall be stated in words at length; *and no warrant shall ever be issued until the same shall be authorized by act or resolution of the Legislature.*"

In view of these constitutional and statutory provisions there is, in my opinion, no legal authority in you, as Comptroller of the State, to draw a warrant on the State Treasurer for the amount of this account, or any other amount for this purpose, and, on the other hand, since there is no statute authorizing the drawing of such warrant, you are prohibited from doing so.

Respectfully submitted,

T. F. WEST,

Attorney General.

TAXATION—COUNTY WARRANTS USED IN
PAYING TAXES.

Tallahassee, Fla., February 24, 1917.

*Honorable Ernest Amos, Comptroller,
Tallahassee, Florida.*

Dear Sir:

Yours of the 19th instant has been received.

I note your inquiry as follows:

"I will thank you to give me your opinion as to whether or not taxes may be paid by persons holding the same with warrants, other than Fine and Forfeiture warrants, outstanding January 1st, 1917, under the present system of County finances and depositories?"

In reply thereto I beg to advise that in my opinion county warrants, other than Fine and Forfeiture warrants, outstanding January 1, 1917, may be used for the payment of State and county taxes, but, before such warrants can be used for this purpose, they will have to be brought within the terms and provisions of the present county financing and depository acts, that is to say, since the office of County Treasurer has been abolished and warrants that were outstanding on January 1 of this year were drawn on the County Treasurer, it will be necessary that these warrants be presented to the board of public instruction or the board of county commissioners, as the case may be, in order that such board may stamp upon such warrants the depository from which they are to be paid, and of course under the statutes above referred to this can only be done when there are funds in such depository sufficient for the payment of such warrants.

Respectfully submitted,

T. F. WEST,
Attorney General.

STATE APPROPRIATIONS, FOR CONTINGENT EXPENSES NOT TO BE USED FOR CLERK HIRE.

Tallahassee, Fla., February 28, 1917.

*Honorable Ernest Amos, Comptroller,
Tallahassee, Florida.*

Dear Sir:

Yours of the 19th instant has been received.

I note your inquiry as follows:

"Section 4, of Chapter 6820, Laws of Florida, contains an inhibition against the payment of clerk hire or clerical assistance out of the contingent fund of any Department of the State government. Please give me your opinion as to whether I may lawfully draw a warrant on the contingent fund appropriated under said Act for any Department in payment of a bill which has been duly approved by the head of the Department which appears to be for clerk hire or clerical assistance employed by and rendered such Department?

"Also please give me your advice as to whether a bill for labor, in performing necessary work in any of the Departments, would fall within the inhibition mentioned above?"

The statute on the subject is Section 4, of Chapter 6820, Acts of 1915, the general appropriation act passed at that session of the Legislature, which reads as follows:

"All moneys appropriated under head of Contingent or Incidental Expenses shall be accounted for to the next Legislature in an itemized statement from each official having charge of any such fund, and no clerk or clerical assistance shall be employed by any State officer and paid out of the Contingent Fund appropriation for Contingent Expenses."

You will note that this statute expressly forbids the

use by any State officer of the appropriations for contingent expenses for clerk hire or clerical assistance.

There is, however, nothing in the statute forbidding the use of funds of this kind for labor in the performance of necessary work in any of the departments for which these appropriations are made.

Respectfully submitted,

T. F. WEST,
Attorney General.

ADJUTANT GENERAL—HOLDS OFFICE AT PLEASURE OF GOVERNOR.

Tallahassee, Fla., March 31, 1917.

*Honorable Ernest Amos, Comptroller,
Tallahassee, Florida,*

Dear Sir:

Yours of the 22d instant has been received.

I note your inquiry as follows:

"A short time ago I handed you copy of a letter received from General J. Clifford R. Foster, notifying me of his intention to make claim for the salary of the Adjutant General.

"You understand that General J. B. Christian has been commissioned by the Governor as Adjutant General of the State of Florida, and is now acting in that capacity.

"Anticipating that requisition will be made upon me by both these gentlemen for the salary provided by law for the payment of the Adjutant General of this State, I would thank you to advise me as to whose requisition I should honor for this salary, and to which of these gentlemen should I draw a warrant in payment of same under the Constitution and Laws of this State."

The law of this State on this subject is Section 16 of Article IV of the Constitution, which reads as follows:

"The Governor shall appoint all commissioned officers of the State Militia, *including an adjutant general* for the State, with rank of brigadier general, who shall be chief of staff. The duties and compensation of all officers so appointed shall be as fixed by law. The terms of office of all commissioned officers of the organized militia shall be continuous during the pleasure of the Governor; subject to such laws as may be enacted by the Legislature providing for their retirement for age or other causes."

It will be noted that the terms of office of the officers affected by this constitutional provision, including the office of Adjutant General, are "during the pleasure of the Governor."

The commission held by Honorable J. C. R. Foster, authorizing him to hold the office of Adjutant General *at the pleasure of the Governor*, and the appointment of Honorable J. B. Christian to this office and the issuing of a commission to him, brought to an end the term for which his predecessor, Honorable J. C. R. Foster, held the office, this act on the part of the Governor being inconsistent with any other conclusion than that it was his intention to terminate the right of the then incumbent to hold and exercise the powers and perform the duties of this office.

In this situation you will, in my opinion, be warranted in recognizing Honorable J. B. Christian as Adjutant General of this State and in issuing your warrant as Comptroller upon the State Treasurer payable to him for the salary of this office as provided by law, commencing from the date of the commission issued to him.

Respectfully submitted,

T. F. WEST,
Attorney General.

EFFECT OF GOVERNORS VETO OF CERTAIN
ITEMS OF GENERAL APPROPRIATION BILL
OF 1917.

Tallahassee, Fla., July 12, 1917.

*Honorable Ernest Amos, State Comptroller,
Tallahassee, Florida.*

My dear Sir:

Receipt of your communication of the 2d instant is acknowledged.

You ask for an opinion upon the question of the legal effect of the veto of the Governor of certain parts of Chapter 7277, Laws of Florida, the general appropriation bill passed at the recent session of the Legislature.

Your inquiry is as follows:

"In accordance with the provisions of Section 28, Article III, and Section 18, Article IV, of the Constitution of this State, the Governor filed with the Secretary of State his veto message to Chapter 7277, the General Appropriation Bill passed at the last session of the Legislature.

"While this veto message undertakes to eliminate certain features of the law, it does not take out any item from the Bill and, in my judgment, is inoperative for the purpose evidently intended; to say the least, I am in doubt about the effectiveness of the veto and will thank you to give me the benefit of your opinion upon the question, so that I may have the same for my guidance in the performance of my official duties.

"I am enclosing you herewith copy of the message, and will thank you for your usual prompt attention in the premises."

The veto message, a copy of which is attached to your communication, is in the following language:

"Tallahassee, Florida,
"June 2d, 1917.

"Hon. J. B. Johnson,
"President of the Senate,
"Capitol.

"Sir:

"In pursuance of Section 28, of Article III, and of Section 18, of Article IV, of the Constitution I have considered Senate Bill Number 627 a Bill to Be Entitled:

" 'An Act making appropriations for salaries and expenses of the State Government for six months of the year 1917, and for the year 1918, and for six months of the year 1919.'

"There are many good reasons why I should exercise the veto power in pursuance of Section 28, of Article III, and Section 18, of Article IV, of the Constitution. A comparison of this, the General Appropriation Bill, together with matters *in pais* of which I am advised manifests the ill-purpose and intent of those members of the Legislature who were moved and instigated by no laudible ambition to do that which was best for the general welfare of Florida, but rather in lieu thereof spent their energies in small acts that would and have tended to hinder the present administration.

"Among other things was the effort by a bill to abolish the Tax Commission. Their further action in this regard being shown by omitting from this the General Appropriation Bill any appropriations for the salaries and expenses of the Tax Commission, which Commission is indispensable to the State, if we are to have, as we must have, an equitable and uniform system of taxation as was contemplated by the Constitution and as was provided by Chapter 6500 of the Acts of 1913, which Chapter has not been repealed and which should not be repealed by any indirect method.

"Under the general headline of 'Miscellaneous' on page 4 of this Bill, the following item is stated:

“‘Salaries and expenses Railroad Commissioners of which amount not more than \$1,800.00 shall be paid for services of special counsel, \$15,000.00.’

And on page 8 under the headline of ‘Miscellaneous’ the following item is stated:

“‘Salaries and expenses of Railroad Commissioners of which amount not more than \$3,600.00 shall be paid for special counsel, \$30,000.00.’

And on page 12 under the headline of ‘Miscellaneous’ the following item is stated:

“‘Salaries and expenses of Railroad Commissioners of which amount not more than \$1,800.00 shall be paid for services of special counsel, \$15,000.00.’

“‘Laws may be passed or repealed in the manner pointed out by the Constitution and not by any indirect manner. To allow the language in the items above referred to to stand and become effective would violate the Constitution and would in an indirect manner repeal Section 1 of Chapter 5620 of the Acts of 1907, which Chapter is:

“‘The Railroad Commissioners of the State of Florida are hereby authorized to employ special counsel to advise them and to conduct any and all litigation or proceeding of any character instituted by or against them, and such special counsel shall be paid such compensation as said Commissioners deem proper out of the funds available for the maintenance of the Railroad Commission.’

“‘The wisdom of the Act of 1907 which authorizes the Railroad Commissioners to employ special counsel and to pay such compensation as the Commissioners deem proper cannot be doubted. Litigation of such character is both technical and important. The Commission should have expert counsel, to secure which they must have, as they are granted by the Acts of 1907, the power to employ counsel and to fix their compensation. I am sorry to note the disposition of a few members of the Legislature

who directed their attention in this regard and who were controlled, not so much by a desire to lessen expenses as by a desire to strike at certain Boards and persons, even going to the extent of trying, because of political affiliations, to punish by lessening the compensation,—conduct reprehensible. The Constitution and the statutes will suffice to defeat and avoid the effects of any such purpose, yet in pursuance of the Constitution I think it best that I should strike from the language of this Bill the following language:

“On page 4 under the headline ‘Miscellaneous,’ ‘of which amount not more than \$1,300.00 shall be paid for services of special counsel.’

“And on page 8 under the headline ‘Miscellaneous,’ ‘of which amount not more than \$3,600.00 shall be paid for special counsel.’

“And on page 12 under the headline ‘Miscellaneous,’ ‘of which amount not more than \$1,800.00 shall be paid for services of special counsel.’

Leaving the Bill as to Railroad Commissioners otherwise unaffected.

“Section 4 of this Bill also manifests the baneful spirit and purpose of a few members of the Legislature, yet I am satisfied that the language of this Section, which Section is a copy of the same Section in former General Appropriation Bills, except the use of two additional words, is due to the ill-advised unpatriotic action, purpose and intent of a few members of the Legislature, the evil effects of which should be avoided, not by the expensive process of a special session of the Legislature but by the people at the next election.

“Considering present conditions and being moved and instigated by a desire to foster and promote the general welfare of Florida and her people I deem it best that I should not return the Bill without my approval, and that I should strike only such parts of the Bill as I have above particularly stated, and that I should leave the

Bill otherwise unaffected, upon which consideration I have today approved the Bill and do herewith transmit the same to you for consideration at the next session of the Legislature in pursuance of Section 28, of Article III of the Constitution.

"Yours respectfully,

"(Signed) SIDNEY J. CATTS,

"Governor."

It appears from the concluding paragraph of this message that the bill was approved by the Governor after certain of its provisions had been pointed out as objectionable.

The purpose of course was to strike from the statute certain designated parts of it upon the theory that this action was authorized by Section 18, of Article IV, of the Constitution of this State.

This section of the Constitution is as follows:

"The governor shall have power to disapprove of any item or items of any bills making appropriations of money embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the executive veto."

The question presented for determination, as I understand it, may be stated about like this:

"Does this constitutional provision conferring upon the Governor of the State *"the power to disapprove of any item or items of any bills making appropriations of money embracing distinct items"* authorize him to strike from appropriation bills language intended to limit and restrict the expenditure of the funds embraced in an item or items in such bills, rendering such language void but leaving the appropriations and the amounts appropriated in tact?

It will be noted that if the full effect intended is given

to every word used in this veto message the amount of no item in the bill is affected, no item is reduced as might be permissible (*Commonwealth ex rel Elkin v. Barnett*, 199 Pa. 161, 55 L. R. A. 882), and the aggregate of the appropriations is the same after the veto as it was before the veto. In other words, the sum of all the items appropriated by this bill is the same after full effect is given to the veto as it was when the bill passed out of the hands of the Legislature.

The word "item" as it is here employed in the Constitution means a definite and specified sum or amount appropriated by legislative action for a definite and specified purpose.

In the constitutional provision under consideration it is expressly stated that the Governor has the power to disapprove any *item* or *items* in bills appropriating money embracing *distinct items*, and *items* in such bills so disapproved shall be void unless passed over the veto in the manner provided by the Constitution.

A number of the states have constitutional provisions similar to this one and it is conceded everywhere that they are designed to keep out of general appropriation bills, which must of necessity be passed in order that the expenses of the State government may be met, appropriations which are objectionable by conferring upon the Governor power to eliminate such objectionable appropriations by withholding his approval therefrom while giving his approval to the remaining items which thereupon "shall be the law."

In considering a constitutional provision similar to ours where the Governor had undertaken to strike out certain provisions from an appropriation bill, the Supreme Court of Mississippi, in the case of *State v. Holder*, 76 Miss. 158, 23 So. 643, said:

"The true meaning of Section 73 is that an appropriation bill made up of several parts (that is, distinct appropriations), different, separable, each complete without the

other, which may be taken from the bill without affecting the others, which may be separated into different parts, complete in themselves, may be approved and become law in accordance with the legislative will, while others of like character may be disapproved, and put before the legislature again disassociated from the other appropriations."

In that case the question was presented and the court held that the Governor could not veto a portion of the appropriation bill that prescribed the conditions upon which moneys may be drawn from the treasury and approve the remainder of such bill.

The appropriations in this bill for the Railroad Commission are in the following language:

"Salaries and expenses Railroad Commissioners of which amount not more than \$1,800.00 shall be paid for services of special counsel, \$15,000.00."

"Salaries and expenses of Railroad Commissioners of which amount not more than \$3,600.00 shall be paid for special counsel, \$30,000.00."

"Salaries and expenses of Railroad Commissioners of which amount not more than \$1,800.00 shall be paid for services of special counsel, \$15,000.00."

The veto message now under consideration in the first place proposes to strike from these appropriations the following language:

"Of which amount not more than \$1,800.00 shall be paid for services of special counsel."

"Of which amount not more than \$3,600.00 shall be paid for special counsel."

"Of which amount not more than \$1,800.00 shall be paid for services of special counsel."

The veto is not directed at the appropriations made for this purpose. They are not disturbed or affected, but the language which limits the amount of the appropriations which may be paid for services of special counsel is sought to be stricken from the bill.

This, in my opinion, is not an exercise of the authority conferred upon the Governor by the Constitution to disapprove an "item" in an appropriation bill, because the language limiting the amount of the appropriations that may be paid out for services of special counsel is not an "item" within the meaning of that term as it is employed in the Constitution. The language sought to be stricken affects the items in the statute to which it relates only by limiting the amount of such items that may be used for one purpose, but if this language were stricken these items in the bill would not be reduced but would remain the same in amount.

It is suggested that the language in this statute which limits the amounts that may be annually expended by the Railroad Commissioners for special counsel employed by them is in conflict with the provisions of Chapter 5620, Acts of 1907, Laws of Florida, giving authority to the Railroad Commissioners to employ special counsel and fix his compensation, and thereby operates indirectly and by implication as a repeal of this feature of the latter act and for that reason is objectionable. This may render it objectionable as a matter of policy, but the power to make appropriations of public money is in the Legislature. No State officer or employee can be paid for his services until the Legislature has made available by appropriate action the necessary funds for this purpose, and the Legislature has the absolute power to limit and fix the maximum amount that it will appropriate for this or any other purpose.

The effect of the action of the Legislature in this instance is to fix the amount that may be used annually by the Railroad Commissioners in the payment of the special counsel employed by them. In this bill the maximum amounts that may be paid to employees of the State in all other departments are definitely stated. The act of 1907, however, is not repealed by the provisions of this act limiting the amount that may be used for this pur-

post. It is still in force and if the general appropriation bill of 1917 should not contain this qualifying clause there would again be no limit on the amount of these items that could be expended by the Railroad Commissioners on this account.

The conclusion, I think, is inescapable that the veto of the Governor did not have the legal effect of eliminating from this bill the language limiting the amount that may be paid annually by the Railroad Commissioners to their attorney from the items appropriated for their salaries and expenses and that this provision of the statute is not inoperative because of any supposed conflict between it and Chapter 5620 of the Acts of 1907, Laws of Florida.

The other question involved relates to the effect of this veto message upon section 4 of the statute.

It is not clear that it was the purpose of the Governor to veto this section. Section 4 is referred to, as will be noted, in the last paragraph of the veto message, but it does not appear that it was understood that the Governor had the power or that he intended to veto this section of the act or any part of it.

It is in the following language:

"All moneys appropriated under head of contingent or incidental expenses shall be accounted for to the next Legislature in an itemized statement from each official having charge of any such fund, and no clerk, clerical assistant, or detective shall be employed by any State officer and paid out of the contingent fund appropriated for contingent expenses."

By its terms statements are required to be made by the heads of departments showing how moneys appropriated "under the head of contingent or incidental expenses" are expended and the use of such appropriations for certain enumerated purposes is forbidden. That this section as a whole is not such a part of this statute as may be regarded and treated as an "item" under the provisions of

Section 18, of Article IV, of the Constitution quoted above seems to me apparent and it is equally clear that words or clauses in a statute of this kind limiting the use of appropriations for contingent or incidental expenses and forbidding their expenditure for certain enumerated purposes cannot be stricken from the bill and rendered void by executive disapproval.

To hold that the Governor may strike words of limitation from an appropriation bill and thereby make available moneys appropriated by such bill for uses expressly forbidden in the bill itself would be conferring upon him legislative authority superior to that possessed by the legislative branch of the State government, and no one of course would contend for or sanction any such holding.

State v. Holder, *supra*.

Under our Constitution supreme executive power is vested in the Governor, but the legislative authority of the State is vested in the Legislature, and the Governor, cognizant always of the relative powers of the two branches of the State government, would not consciously undertake to exercise powers properly belonging to the Legislature.

It may be that in approving or vetoing a bill the Governor acts as a part of the law-making power of the State (State ex rel Boyd v. Deal, 24 Fla. 293), but the veto of a bill is action negative in character. The word "veto" means "I forbid." He cannot initiate, amend or change legislation, and all bills, except bills "making appropriations of money embracing distinct items," must be approved or disapproved as a whole.

With regard to the latter class, as we have seen, items disapproved shall be void, but in this case no item in the bill has been disapproved and the veto message is, in my opinion, ineffectual and nugatory.

Respectfully submitted,

T. F. WEST,

Attorney General.

AUTHORITY TO PAY EXPENSES FOR DETECTION
AND CONVICTION OF CERTAIN PERSONS
FROM CONTINGENT FUND OF STATE SUPER-
INTENDENT.

Tallahassee, Fla., July 21, 1917.

*Honorable Ernest Amos, Comptroller,
Capitol.*

Dear Sir:

The State Superintendent explains to me that the attached account was incurred in running down and prosecuting a negro man who has for a number of years from time to time stolen the slips containing the questions for Teachers' examinations in this State and sold them to negro applicants for teachers' certificates who were taking the examinations.

In view of this fact and the further fact that they have heretofore been unable to secure through the ordinary channels evidence sufficient to convict this negro and the value and benefit to the cause of public education of his detection and conviction, I am of the opinion that you will be warranted in paying the account as approved by the State Superintendent from the contingent fund appropriated by the Legislature for his department.

Very respectfully,

T. F. WEST,
Attorney General.

MILITIA—EXPENSES OF MAY BE PAID FROM
CONTINGENT FUND OF GOVERNOR WHEN
CALLED OUT BY HIM WHEN NO OTHER
FUNDS ARE AVAILABLE.

Tallahassee, Fla., December 19, 1917.

*Hon. Ernest Amos, Comptroller,
Capitol.*

Dear Sir:

Replying to your request for an opinion in regard to the expenses incurred in connection with the State Militia called out by the Governor to afford protection to Barton and others on trial in Madison County at the recent term of the Circuit Court will say that I have advised the Governor as follows:

"Replying to your inquiry of the 17th instant in which you desire to know whether or not you will be authorized to approve vouchers for the expenses incurred by the State Militia, ordered to Madison some weeks ago in order to preserve the peace during the trial of certain parties, out of the appropriation made for contingent expenses of State, I beg to advise that it is my opinion that the appropriation made for contingent expenses of the State may be used in so far as the same is necessary for the payment of such expenses as above mentioned, and that you would, as Governor, be authorized to approve vouchers covering such expenses to be paid out of said fund."

As stated in the above quoted letter, it is my opinion that these expenses may properly be paid out of the appropriation made for contingent expenses of the State.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

AUTOMOBILES OWNED AND OPERATED BY FEDERAL GOVERNMENT NOT REQUIRED TO PAY REGISTRATION FEE.

Tallahassee, Fla., December 29, 1917.

*Hon Ernest Amos, Comptroller,
Tallahassee, Fla.*

Dear Sir:

Replying to your oral inquiry of this date with reference to the matter of requiring the registration fee provided by Section 6 of Chapter 7275, Laws of Florida, Acts of 1917, to be paid upon automobiles owned by the United States Government, I beg to advise that the only exception specifically made is as to motor trucks operated by County Commissioners on County roads for constructing or repairing roads, and owned by the County or Road Districts, and used by them exclusively in such work. However, I do not think that it was the intention of the Legislature to require the United States Government to pay the registration fee above mentioned upon its motor vehicles when used wholly for governmental purposes.

It is my opinion that you would be authorized to not require the payment by the United States Government of the registration fee provided for in Chapter 7275 upon motor vehicles owned and operated by the United States Government solely for governmental purposes.

Yours, very truly,

VAN C. SWEARINGEN,

Attorney General.

PUGILISTIC EXHIBITIONS.

Tallahassee, January 29, 1918.

*Hon. Sidney J. Catts, Governor,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your communication of the 28th instant enclosing letter from Hon. F. D. Sanders, of Pensacola, Florida, to you under date of the 23rd instant; also letter from Mr. S. A. Bowing to Mr. Sanders under date of November 3, 1917.

Replying to your communication, I beg to advise that Sections 3253 and 3255, of the Compiled Laws of 1914, provides as follows:

"If any person or persons shall voluntarily engage in any pugilistic exhibition, fight or encounter, with or without gloves, between man and man, or in an exhibition or fight between man and bull, or between man and any other animal, for money or anything of value, or upon the result of which any money or anything of value is to be collected, acquired, bet or wagered, or to see which any *admission fee* is charged, directly or indirectly, shall be punished by a fine of not less than two thousand five hundred, nor more than five thousand dollars, or by imprisonment for not more than five years."

"By the term pugilistic exhibition, encounter or fight, with or without gloves, as used above, is meant any voluntary fight or personal encounter, by blows, between two or more men, for money, prize of any character, points, distinction or fame, or other thing of value, or upon the result of which any money or thing of value is bet or wagered, or for which an *admission fee* is charged, directly or indirectly."

From the statement in Mr. Sanders' letter it appears

that the exhibition of boxing and wrestling that it is desired to have would come within the provisions of the above quoted law, and, therefore, are prohibited.

The stated enclosures are herewith returned.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General,

**AUTOMOBILES—DUPLICATE REGISTRATION
TAGS MAY BE ISSUED WHEN DESTROYED BY
FIRE.**

Tallahassee, Fla., March 28, 1918.

*Honorable Ernest Amos, Comptroller,
The Capitol.*

Dear Sir:

I am in receipt of your letter of the 27th instant which reads as follows:

"Sometime ago I registered a car under the provisions of Chapter 7275, Acts of 1917, and delivered number plates for machine licensed thereunder. The owner of this truck has had the misfortune to have it destroyed by fire together with the tags and having procured another truck has made application to this office for duplicate number plates or tags of those assigned to the machine originally registered with a view of attaching them to his new truck. Under Section 4 of said law the loss or destruction of a certificate of registration or of the number plates is recognized and provided for, but the circumstances of the case referred to does not seem to be covered.

"I will thank you to give me your opinion as to

whether or not I would be warranted under the circumstances in cancelling the original application above referred to and applying the proceeds thereof, \$10.00, towards the registration of the new truck under a new application and assign the same number plates heretofore given to the machine destroyed and have the owner apply for duplicate number plates in lieu of those destroyed."

Replying to your inquiry, I beg to advise that under the provisions of Section 4, of Chapter 7275, Acts of 1917, Laws of Florida, it is provided:

"Upon the filing of such application and the payment of the fee herein provided for, the Comptroller shall assign to such motor vehicle a distinctive number and without expense to the applicant, issue and deliver to the owner a certificate of registration and two number plates, of the form and size herein provided for. In the event of the loss, mutilation or destruction of a certificate of registration or of a number plate, the owner of a registered motor vehicle may obtain from the Comptroller a duplicate thereof upon filing in the office of the Comptroller an affidavit showing the fact and the payment of a fee of one dollar for each duplicate."

Under the above provision of law it is clear that it was the intention of the Legislature not to permit the loss or destruction of a certificate of registration, or of a number plate, to deprive the owner thereof of the benefits provided for by the law after having paid therefor. While it is not expressly stated in this law that a person, the owner of a car, may have, in the event of the destruction of his car which was originally registered, the benefit of his original license though the car be destroyed, yet it is indicated by the provision of law above quoted that such contingencies should be met and provided for, and I take it that you would be authorized in such a case, and under the circumstances as set out in your communication, to cancel the original application and apply the proceeds thereof towards the registration of the motor

vehicle which is to take the place of the one destroyed by fire, and to issue the same number plates as originally issued to the owner, to be used on such new truck, and that notation of such substitution be made on the records.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COMMISSIONER OF AGRICULTURE TRAVELING
EXPENSES NOT PAYABLE FROM APPROPRIA-
TION FOR FOOD AND DRUG INSPECTORS.

Tallahassee, Fla., April 24, 1918.

*Hon. Ernest Amos, Comptroller,
Tallahassee, Fla.*

Dear Sir:

Your communication of the 23rd instant making request for an official opinion received as follows:

"Section 9 of Chapter 6541, Laws of Florida, contains the following provision:

"The Commissioner of Agriculture, by virtue of his office, shall at all times, have the power of an inspector, and all expenses incurred in the performance of the duties of an Inspector shall be paid in the same manner as the expenses of other Inspectors.

"The State Chemist and the Assistant State Chemist shall be ex officio Inspectors of the Chemical Division of the Department of Agriculture; their annual traveling expenses shall be paid on detailed vouchers approved by the Commissioner of Agriculture and State Chemist.

"Detailed vouchers for such expenses shall be rendered by said Inspector and paid only upon the approval of the Commissioner of Agriculture.

"I have quoted the foregoing provisions in order that I may have your opinion as to whether or not the traveling expenses provided for as therein stated are payable by warrant on the State Treasurer without any other approval when such expenses are incurred by the Commissioner of Agriculture in the performance of the duties of an Inspector under Chapter 6541, Laws of Florida and whether or not the State Chemist in the performance of his duties as ex officio Inspector of the Chemical Division is required to have his traveling expenses incurred under and in pursuance of the provisions above referred to approved by the Commissioner of Agriculture as well as himself before payment can be made.

"There is no appropriation contained in Chapter 6541, Laws of Florida, and the appropriation out of which the claim would have to be paid is contained in the General Appropriation Bill, which provides for the payment of the traveling expenses of three Food and Drug Inspectors and appropriates \$3,600.00 for the year 1918 for that purpose.

"A bill was presented today for Hon. W. A. McRae, for traveling expenses incurred by him when acting as an Inspector under Chapter 6541, Laws of Florida, which is approved by him, payable out of traveling expenses of Food and Drug Inspectors, but the bill is not approved by the State Chemist, and as this presents the question as to whether or not payment can be made by warrant on the State Treasurer, drawn as indicated by the Commissioner of Agriculture, it also raises the question as to whether or not warrants can be drawn on the State Treasurer under the other provisions of the Section above quoted for the State Chemist when acting as an Inspector of Food and Drugs.

"Kindly let me have your opinion at your earliest convenience."

Replying to the above will advise that the General Appropriation Bill of 1917 embodied in Chapter 7277,

Laws of 1917, contains an item of appropriation as follows:

"Traveling expenses three Food and Drug Inspectors, \$3,600.00."

It is an established rule of construction that all laws making appropriation should be construed strictly, therefore it is my opinion that it was not the intention of the Legislature to pay the traveling expenses of others than the three Food and Drug Inspectors from this item of \$3,600.00.

While it is evident that Section 9, of Chapter 6541, Laws of 1913, which provides that "the Commissioner of Agriculture, by virtue of his office, shall at all times have the power of an Inspector, and all expenses incurred in the performance of the duties of an Inspector shall be paid in the same manner as the expenses of other Inspectors," yet the Legislature of 1917 failed to make an appropriation including the traveling expenses of the Commissioner of Agriculture in the item of expense referred to above.

This seemingly inconsistent provision of the law is possibly explained by the fact that the same General Appropriation Bill contains the following item:

"Traveling and other contingent expenses Commissioner of Agriculture on official business, \$400.00."

There could scarcely be any question that the item of expense referred to in your communication could lawfully be paid out of the above last stated item.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

TAX COMMISSION NOT AUTHORIZED TO HAVE
PRINTED ANY OTHER THAN THE BIENNIAL
REPORT.

Tallahassee, Fla., April 30, 1918.

*Hon. Ernest Amos, Comptroller,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your communication of the 15th instant as follows:

"Section 652 of the General Statutes of the State of Florida provides that:

"All the public printing of the State of Florida shall be let out upon contract to the lowest responsible bidder, who shall furnish all paper and other material used in printing and binding."

"Section 655 provides for notice calling for bids to be published and contains directions as to the method and manner of bidding, etc.

"Section 9 of Chapter 6500 of the Laws of Florida provides that: 'It shall be the duty of the Commission, and it shall have power and authority to: * * * *

"(14) To transmit to the Governor and to each member of the Legislature, thirty days before the meeting of the Legislature, the report of the Commission showing all the taxable property in the State and the value of the same in tabulated form with recommendations for improvements in the system of taxation in the State, together with such measures as may be formulated for the consideration of the Legislature.'"

"The State printing contract for the period beginning October 1st, 1917, awarded by the Board of Commissioners of State Institutions to T. J. Appleyard under Section 652, et seq, contains the following provision: 'Form

1402. Annual report of State Tax Commission (Special for 1917)."

"I would be pleased to have your opinion as to whether or not a report published at any other time and in any other manner than that prescribed by the fourteenth paragraph of Section 9 of Chapter 6500, above quoted, can be paid for by warrants drawn by the Comptroller on the State Treasurer."

Replying to your inquiry, I beg to advise that Section 9, of Chapter 6500, seems to be the section prescribing the general duties and powers of the Tax Commission. Paragraph 14 of this Section provides that a report of the Commission be transmitted to the Governor and to each member of the Legislature 30 days before the convening of the Legislature, and enumerates certain things that shall be contained in such report.

Under the provision of law mentioned, it would appear that authority is given the Tax Commission to make and have printed a report once every two years; it being specifically set out when this report shall be made. Therefore, I take it that it was not the purpose of the Legislature to grant authority to the Tax Commission to issue and have printed reports at any other time, and I do not think that under the authority granted the Commission by Paragraph 14, of Section 9, that you would be authorized in issuing a warrant to pay for the printing of a report of the Tax Commission when the bill for printing is for a report issued at a time other than that mentioned in said paragraph.

It is provided in Section 11 that,—

"There is hereby annually appropriated out of the general revenue fund of the State a sum sufficient to carry out the provisions of this Act, for the payment of salaries of said Commissioners and their other expenses herein provided for not to exceed five thousand dollars per annum."

It will be noted from this provision of law that the

expenses to be incurred by the Tax Commissioners is limited to those mentioned in the Act in the following language of said Section—"and their other expenses herein provided for."

If a bill for printing a report of the Tax Commission issued at any time other than that mentioned in said paragraph 14, of Section 9, can be authorized to be paid at all it would have to come under the provisions of Section 8 wherein it is provided "and all necessary expenses shall be audited and paid as other State expenses are audited and paid."

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

MILITIA, RENT OF ARMORY FOR NAVAL MILITIA.

Tallahassee, Fla., May 22, 1918.

*Hon. Ernest Amos, Comptroller,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of May 21st transmitting to me bill for rent of Armory for Naval Militia at Key West, Florida, together with certain letters and papers relative thereto. I note your request that I furnish you with copy of my letter to Hon. J. B. Christian upon the payment of this bill. By reference to the letter of General Christian's to me you will note that he requested that I bring the matter to the attention of the Governor, which I did, and I am herewith enclosing copy of my letter to the Governor upon the subject.

I am returning file herewith.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

MARKETING COMMISSION—ACT CREATING DOES
NOT AUTHORIZE PAYMENT OF TRAVELING
EXPENSES OF A CLERK.

Tallahassee, Fla., June 7, 1918.

*Hon. Ernest Amos, Comptroller,
Capitol.*

Dear Sir:

Your request for official opinion received, to-wit:

"Section 3 of Chapter 7315, Acts of 1917, authorizes the State Marketing Commissioner, upon the approval of the Commissioner of Agriculture, to employ a clerk or clerks when necessary and provides appropriations to take care of the compensation of them.

"Sections 2 of said Act also provides for the compensation and traveling expenses of the State Marketing Commissioner, but there seems to be no expressed provision authorizing any clerk or clerks of said Department, other than the State Marketing Commissioner himself, to travel at the expense of the State.

"I would thank you to advise me if in your opinion the Statute referred to authorizes me to draw warrants in payment of the traveling expenses of any person connected with the State Marketing Bureau, other than the State Marketing Commissioner himself?"

An examination of Chapter 7315, Laws of 1917, fails to show that any provision is contained therein for the payment of the traveling expenses of anyone except the members of the Executive Committee and the State Marketing Commissioner.

It is, therefore, my opinion that the law does not authorize you to draw a warrant in payment of the traveling expenses of other persons than those mentioned above.

Respectfully submitted,
VAN C. SWEARINGEN,
Attorney General.

AUTOMOBILES—FEE REQUIRED FOR REGISTRATION OF CARS OF SEVEN PASSENGER WITH LESS THAN 25 HORSEPOWER.

Tallahassee, Fla., July 12, 1918.

*Hon. Ernest Amos, Comptroller,
Tallahassee, Florida.*

Dear Sir:

Your letter of recent date, requesting an official opinion of this office, received, and which reads as follows:

"After reading the opinion of the Court in the case of D. A. Finlayson vs. The Comptroller construing Series B of Section 6, of Chapter 7275, I am now in doubt as to how to classify certain motor vehicles applying for registration.

"For instance, I have an application to register an automobile of less than 25 h. p. seating seven passengers. Under what Series shall I classify this car?

"It would seem under said decision that having a seating capacity for seven passengers it would not come within the provisions of Series B because it carries more than five persons, nor fall under Series C because it has less than 25 h. p.

"Kindly advise what, in your opinion, applicant in this case should be required to pay for registration of this car?"

Replying to the above, I beg leave to advise that after reading the opinion referred to in your communication I have come to the conclusion that, strictly speaking, an automobile of less than 25 h. p. seating seven passengers is not covered by the statute under the decision of the Supreme Court, in that Series B has been construed to be controlling as to all automobiles of "one and not more than five" seating capacity, and therefore excludes by

inference automobiles of other seating capacity. I do not think, however, that this automobile would be exempt from the fee in view of the fact that another Section of this statute provides that every automobile must be registered and a tag procured as provided for therein, and there is no way for those to be procured from you except upon the payment of at least \$5.00, and in view of this fact I believe that you should construe the law in favor of the tax payer and permit the owner to register an automobile of the description given above for the fee of \$5.00.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

Opinions to State Treasurer.

INSURANCE AGENT—COUNTY LICENSE AUTHORIZES TO DO BUSINESS ONLY IN COUNTY WHERE ISSUED.

Tallahassee, Fla., January 6, 1917.

*Hon. J. C. Luning, State Treasurer,
 Capitol.*

Dear Sir:

I am in receipt of your communication as follows:

"I transmit herewith a letter from Mr. Chas. E. Clarke, President of the Peninsular Casualty Company of this State, and at Mr. Clarke's request a letter addressed to him by the counsel of his company, Mr. Jno. W. Dodge, and also an opinion purported to be rendered by the Supreme Court of Texas with reference to the failure to

pay license taxes for an agent of said company, who is acting as a local agent for said company both in Jefferson and Madison Counties.

"Section 29 of the License Laws of the State, among other things, provides as follows:

"Each insurance company or association, firm or individual mentioned in this Act, doing business in this State shall, upon the first day of October after the passage of this Act and upon the first day of each succeeding October, furnish to the State Treasurer the name and address of each agent or solicitor authorized to write insurance in this State * * * * and for such local agent or solicitor each insurance company shall pay to the State Treasurer a license tax of five dollars, and it shall be the duty of the State Treasurer to transmit to the County Tax Collectors the name and address of every such agent as resides respectively in such counties. Counties, cities and towns may require a license tax of any such agent not to exceed fifty per cent of the State license tax.'

"Section 29 also provides that 'each insurance company, association, firm or individual shall pay to the State Treasurer for each traveling agent or solicitor doing business in this State a license tax of \$25.00 for each agent.'

"Under this law, which is practically a duplicate of the law which precedes it relating to this subject, I have construed that a local agent has no authority to solicit or transact any business outside of the county in which he resides, and that when he goes beyond the limits of the county in which he resides and for which he is licensed he then becomes a traveling agent within the meaning of the law and the company he represents is liable to a license tax of \$25.00 for him in such capacity. Mr. Dodge contends that a local agent may transact business in more than one county and that unless he travels generally over the State that he is not within the meaning of the law a traveling agent. I understand that my im-

mediate predecessor in office also ruled the same as I ruled on this matter. I am impressed with the fact that the Legislature in framing this act by requiring the State Treasurer to transmit to the County Tax Collector the name and address of every such agent as resides respectively in such counties, and allowing the counties, cities, and towns to require a license tax of such agent not to exceed fifty per cent of the State license tax, clearly intended that the agent should be limited to one county and that county the one in which he resides, particularly as it requires 'the name and address of such agent as resides respectively in such county' to be furnished to the State Treasurer when making application for a license for such agent. It seems also clear to me that that portion of the law which requires the State Treasurer to furnish the County Tax Collector with the name and address of every agent so licensed to solicit or transact business locally in his county to such Tax Collector further emphasizes the fact of the intent of the legislature to limit the operations of such agent to the county in which he resides.

"Had it been the intent of the Legislature to allow a local agent to solicit or transact business in another county and not to solicit business generally throughout the State, the Legislature would have said so in apparent terms. If it was the intent of the Legislature to allow a local agent to solicit business in an adjoining county and not go beyond the confines of adjoining counties, it seems to me that there would have been no use to have prescribed additional regulations or fees for an agent soliciting say in five or six counties. It is very clear to me that whenever an agent went beyond the confines of his county whether he went into one or more adjoining counties or four or five, he then became liable to the traveling agents license, and the company is required to pay accordingly.

"I would be pleased to have you render me your opin-

ion as to the interpretation of this law as soon as possible so that I may advise the company of same."

The question presented is not entirely free from doubt, but the conclusion reached by your office as stated in your communication is in my opinion, very probably the correct one, and you will, I think, be fully warranted in adhering to it until some court of competent jurisdiction holds to the contrary.

Respectfully submitted,

T. F. WEST,

Attorney General.

AGENTS WRITING LIABILITY INSURANCE NOT
AUTHORIZED TO REBATE NOR DIVIDE COM-
MISSIONS.

Tallahassee, Fla., July 16, 1917.

*Honorable J. C. Luning, State Treasurer,
Capitol.*

Dear Sir:

Your request of the 7th instant for opinion received as follows:

"On June 27th, I received a letter from Mr. J. A. Ormond enclosing an affidavit, stating that the Thornton Insurance Agency of Pensacola has for many years and still writes the liability insurance of the Jarratt Lumber Corporation in the Maryland Casualty Company and that he allows to the Jarratt Lumber Corporation a rebate of 20% of the premium charged as an inducement to secure this business, and on account of this rebate the

Jarratt Lumber Corporation will not entertain any proposition to give the business to any other company.

"I construed this to be a violation of Chapter 6849, Acts of 1915, Laws of Florida, and referred the affidavit to Hon. John H. Carter, County Prosecuting Attorney, at Marianna, Florida.

"I am now in receipt of a letter from Mr. Carter in which he states that in his opinion Chapter 6849, above referred to does not apply to indemnity companies nor companies writing indemnity bonds or liability insurance.

"Mr. Carter asks that I secure your opinion as to this, and states that he will be governed by same."

Replying to above will state that after reading and comparing the different provisions of the act in question I have concluded that the law taken as a whole is broad enough to cover not only life insurance business but all kind of insurance, including what is termed "liability" insurance.

My reasons for this view briefly stated are: (1) That the title to the act is broad enough to cover all kinds of insurance; (2) While the language "all life insurance companies" was used in the first paragraph of section 1 of the act, it was very likely placed there to emphasize certain particular discriminations practiced by agents in soliciting and writing life or endowment insurance; (3) It is noted that the second paragraph of Section 1 begins by using the broad term "no insurance company or association" and further on therein provides that companies shall not offer or give directly or indirectly "as inducement to insurance on *any risk* in this State," etc.; (4) The third paragraph of the same section has reference to any "insured person, firm or corporation" accepting rebates, etc., and this quoted term of course would include not only life insurance business but other kind of insurance as well. The fourth paragraph simply fixes the penalty for violating the provisions of section 1. The fifth paragraph is in effect a proviso exempting from the

penalties of said section "non-participating life insurance" and "industrial insurance on the weekly payment plan."

What has been said of the different provisions of section 1 is applicable in substance to section 2 of the act except the latter always uses the broader term "insurance companies."

My impression is that "liability" insurance is insurance "against liability of the insured for the death or disability of another, or for loss or damage suffered by another in his person or property." (Report American Bar Association—Insurance Laws—1915.)

Indemnity insurance against liability of employers for injury to employees is comparatively a new branch of the law (6 L. R. A. (N. S.)), but the courts have held, in cases involving the Maryland Casualty Company, that contracts to indemnify an employer against liability for personal injuries suffered by his employees were regarded as contracts of insurance (47 L. R. A. (N. S.) 294 (6 L. R. A. (N. S.) 562).

Again, the act in question is not the only extant law on this specific question. The fourth paragraph of Section 29 of Chapter 6421, Laws of 1913, which covers life, fire and other liability insurance, provides that on October 1 of each year every insurance company or agent doing business in this State shall make oath "that he has not and will not directly or indirectly divide or offer to divide his commission, or rebate any part of any premium on any policy of insurance with any corporation, firm or individual;" and my understanding is that you require agents of the Maryland Casualty Company to comply with above.

The two acts are easily construed together. Our Supreme Court in the case of *Goode v. State*, 50 Fla. 45, held that statutes on the same subject must be given a construction which, will, if possible, give "effect to every clause and every part of the statute" and that "less re-

gard is to be paid to the words used than the policy which dictates the act."

It would seem that there is no good reason for saying that the use of the words "life insurance companies" and other terms directly applicable to that kind of insurance in certain parts of the law precludes the application of the general term "insurance" as used in other portions of the same law to other kinds of insurance than life insurance.

It is also observed from your communication, which contains a copy of the letter written to the county attorney of Jackson County attached thereto, that you interpret the act in question to apply to liability insurance business, and it is a principle well established in the courts of this State that a practical construction of a statute by an executive department affecting the performance of his duty is of great weight and persuasive force (*State v. Bryan*), 50 Fla. 293; *Bloxham v. C. E. L. & Ry. Co.*, 36 Fla. 519).

It follows from what has been said that I am of the opinion that the act in question, together with the other statute cited, was intended to cover all insurance companies doing a liability business in this State, though the courts might hold otherwise.

Respectfully submitted,

T. F. WEST,

Attorney General.

INSURANCE AGENTS—AUTHORITY TO DIVIDE
COMMISSIONS ON PREMIUMS.

Tallahassee, Fla., August 13th, 1917.

*Hon. J. C. Luning, State Treasurer,
Tallahassee, Florida.*

My Dear Sir:

Your communication of the 3rd instant received as follows:

"I enclose herewith copy of a letter from the Fidelity and Deposit Company of Maryland, Baltimore, Md., also copy of my reply to same.

"You will note that I am requested to have your opinion on the following question, "Whether the Legislature of Florida intended in the Act of 1915 to compel a resident agent to claim his full commissions and that under the resident laws of your State the resident agent cannot lawfully surrender or waive any portion of his commissions."

Replying to the above will state that after reading the attached copy of your reply of August 2nd, 1917, to the letter of the Fidelity and Deposit Company, I am of the opinion that very little if anything can be added to your letter to make matters more comprehensive.

It is obvious that Chapter 6857, Laws of 1915, is somewhat confusing as to use of certain terms. However, it has been construed to mean, and which is no doubt correct, that companies and their agents executing surety bonds are included therein both by intent and language used. While it is true that there are terms used in Section 29 of Chapter 6421, Laws of 1913, and Chapter 6857, Laws of 1915, also the act of 1917, which may not be altogether appropriate to the surety companies, yet this fact does not exclude the idea that these laws specifically mention such companies.

As I see it, the Act of 1915 requires every surety

bond of every kind executed in connection with person or property having their situs in this State to be signed by a local resident agent of Florida, and that he shall receive the full commissions on same.

Now the Act of 1917 (Chapter 7296) modifies the Act of 1915 by authorizing a division of commissions between a licensed resident agent of bonding companies and non-resident agents or brokers "when a bond is *procured and written* by said non-resident agent or broker and countersigned by said licensed resident agent, provided the official, association, property or person bonded is in this State."

My idea is that where a non-resident agent or broker of a non-resident company issues or writes a bond securing a contract to erect a building in the State of Florida, the same must be countersigned by the resident agent of the said company, and it is optional with him to divide his commission, but if the bond or policy is "issued" and countersigned by a resident agent, he would not have he lawful right to surrender or waive any portion of his commissions, and to so hold would make the act in question practically of no effect.

Respectfully submitted,

T. F. WEST,

Attorney General.

STATE SCHOOL FUND—"CONSCIENCE MONEY"—
APPLIED TO STATE SCHOOL FUND.

Tallahassee, Fla., September 11, 1917.

*Hon. J. C. Luning, State Treasurer,
Capitol.*

Dear Sir:

Your communication of the 10th instant asking for official opinion duly received, reading as follows:

"I transmit herewith a letter from Eddie Love Morress, Quitman, Georgia, who has transmitted with said letter to me a check made payable to the order of 'State Treasury' for the sum of \$31.55.

"In this letter the writer states that this check is to cover an amount received by a party who taught school in this State several years ago and that said amount was received fraudulently through erroneous reports and representations made by the party so receiving same amounts and requests that this be turned into the State Treasury.

"Kindly advise me the proper course to pursue in this matter."

Replying to above will advise that we have no statute in this State which would appear to cover the circumstances presented by your communication. However, I do find that Section 4 of Article XII of the Constitution provides that the State school fund shall be derived from certain specific sources, one of which is "donations to the State when the purpose is not specified."

It appears that this money is donated to the State without mentioning any specific fund to which it should be applied. Therefore, it is my opinion that you would have authority to receive this sum of money and apply the same to the State school fund.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

COUNTY WARRANTS.

LEGALITY OF TIME WARRANTS ISSUED BY CAL-
HOUN COUNTY.

Tallahassee, Fla., September 27th, 1917

*Hon. J. C. Luning, State Treasurer,
The Capitol.*

My Dear Sir:

I have examined the issue of \$43,500 of interest-bearing Time Warrants of Calhoun County, together with certified copy of proceedings of the Board of County Commissioners of Calhoun County, Florida, in connection with the issuing of said warrants, as authorized by Chapter 7536, Laws of Florida, Acts of 1917, and beg to advise that I find from said examination that the proceedings of the Board of County Commissioners in providing for the issuance of the said warrants and the form thereof appear to be regular and in conformity with the Statute, and constitutes a valid obligation against the county of Calhoun.

I am herewith transmitting the said certified copies of proceedings and warrants to you.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SURETY COMPANIES.

AUTHORITY OF STATE TREASURER TO REVOKE
LICENSE OF CERTAIN SURETY COMPANIES.

Tallahassee, Fla., October 17th, 1917.

*Hon. J. C. Luning, State Treasurer,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your communication of the 11th inst. as follows:

"I transmit herewith letters of Cooper, Cooper & Osborne of October 4th, 1917, and copy of my reply thereto, also their letter of the 8th inst. in reply to mine of the 6th. You will note that they disagree with my decision in this matter and request that I give same further consideration.

"I have written these gentlemen that I have referred this matter to you for your opinion as to the legal status of same, and will thank you to kindly give me this opinion in writing as soon as possible, as these gentlemen, as will be seen from their letter of the 4th, are desirous of receiving by final decision in this matter at the earliest possible date."

From the enclosures which you transmit with your letter; a letter from Messrs. Cooper, Cooper & Osborne, of Jacksonville, Florida, under date of October 4th, and your reply thereto under date of October 6th and their reply dated October 8th, to your communication, I understand that you desire my opinion on the following question:

"Is it the duty of the State Treasury, under the provision of Section 795 of the General Statutes of Florida, to revoke the license of any fidelity insurance company

or other corporation or company doing a fidelity insurance business in this State, if such insurance company or other corporation or company begins any suit in the United States Court as to *any* bond they are surety upon, or to remove or cause to be removed any suit thereto."

Section 2795 of the General Statutes provides as follows:

"2795. WHEN COMPANY MAY BE SUED.—In event of any fidelity insurance company, or other corporation or company doing a fidelity insurance business in this State, shall become surety on any of the *bonds or obligations mentioned in this chapter*, such corporation or company shall be subject to be sued on such bonds or obligations, in the county of the residence of the principal of such bond or obligation; Provided, That said companies, before beginning business in this State, or signing any bond, shall obtain a license from the State Treasurer, which license shall be revoked if said company begins any suit in the United States Court as to any bond they are surety upon, or to remove or cause to be removed any suit thereto."

To look alone to the language of this section in construing it, it might be said that it would apply to *any* bond upon which any company therein mentioned is surety, and that the State Treasurer should revoke the license of any such company if it begins any suit in the United States Court as to any bond it is surety upon, or to remove or cause to be removed any suit thereto. But in order that a proper construction may be placed upon the language of the section we should endeavor to give full force to all its provisions.

We find the following words in this section, which should be given proper consideration, "Bonds or obligations mentioned in this Chapter." These are words of limitation and in construing the extent of the operation of this section we should endeavor to ascertain what meaning the law-making body intended should be given

them. To look to Section 2795, General Statutes, alone for this information would be unavailing. Therefore, we must go to the source of origin of this provision of law in an endeavor to get at the true intention of the Legislature in enacting it.

Section 2795 of the General Statutes as originally enacted was a part of Section 5 of Chapter 4671 of the Laws of 1899. By reference to this Chapter it will be noted that it was "AN ACT to authorize solvent guarantee companies, surety companies, fidelity insurance companies, and fidelity deposit companies to become surety upon bonds of City, County and State Officers, and providing remedies against, or upon such bonds, and for other purposes."

From the title of the original act as above quoted, it may readily be seen that the limitation upon the words "bonds or other obligations mentioned in this Chapter," was as to the kind of bonds such companies as are mentioned in the title were authorized to become surety upon, to-wit; bonds of City, County and State Officers. This was undoubtedly the only class of bonds to which the original law, Chapter 4671, Laws of 1899, applied, and that provision of section 5 thereof, which provided that the license of any company shall be revoked that begins any suit in the United States Court as to any bond it is surety upon, or to remove or cause to be removed any suit thereto, applies only to those kinds of bonds which such companies as are mentioned therein are authorized to become surety upon.

We do not think that it can be seriously contended that a revision or codification of the general laws can affect or give an additional scope to a statute without some special enactment.

Mr. Sutherland, in his work on Statutory Construction, says that:

"When it becomes necessary to construe language used in the revision which leaves a substantial doubt of its

meaning, the original statutes may be resorted to for ascertaining that meaning. In such case the title of the original act may be considered, especially where such act is passed in a State whose constitution requires the subject to be 'there expressed.'

Lewis Sutherland Statutory Construction (2nd Ed.), Sec. 271.

It is further said in this connection that "the mere reenactment of a statute in a code or revision has been held not to change its meaning, construction or effect. And this is held to be true though the sections of an act are separate and arranged in different connections." Also that "Where the general language of an act is restrained by its title *it will have the same limited meaning* when incorporated into a code without the title."

Lewis Sutherland Statutory Construction (2nd Ed.) 451.

In the case before us it appears that Section 2795 of the General Statutes was originally a part of an act with specific limitations upon its scope, to wit: "An Act to Authorize Solvent Guarantee Companies, Surety Companies, Fidelity Insurance Companies and Fidelity Deposit Companies to Become Surety Upon the Bonds of City, County and State Officers, and Providing Remedies Against, or Upon Such Bonds, and for Other Sources," and was not effected by being incorporated into the General Statutes, but retained the same force and effect as it had as a part of Chapter 4671, Laws of 1899, and as its provisions as originally enacted applied only to companies which become surety upon the bonds of City, County and State Officers, I am of the opinion that your duty to revoke the license of any company that begins any suit in the United States Court as to any bonds they are surety upon, or cause to be removed any suit thereto, as provided by Section 2795 of the Gen-

eral Statutes, relates only to those bonds of City, County and State officers.

Respectfully submitted,
VAN C. SWEARINGEN,
Attorney General.

ABSTRACT OF TITLE TO CERTAIN LANDS
EXAMINED.

Tallahassee, Fla., November 1, 1917.

*Hon. J. C. Luning, State Treasurer,
Tallahassee, Florida.*

Dear Sir:

I have examined the Abstract of Title which you delivered to this office, to the following described land.

Commencing at middle of East boundary of Alvarez Grant in Township 15 South, Range 22 East, W. 897 Chains, N. 15.48 Chains, E. 8.97 Chains, S. 25.48 Chains containing 22.86 Acres.

I find from the examination of said abstract that there appears to be a mortgage from Mrs. Jennie A. Bell and husband, C. S. Bell to The Ocala National Bank in the sum of \$700.00, which appears to be still of full force and effect.

I also find that there appears to be a Bond for title from Jennie A. Bell and husband, C. S. Bell to J. G. McNeal, which does not appear of record to have been cancelled, forfeited or otherwise disposed of.

With the exception of the above named instrument there appears to be vested in Mrs. Jennie A. Bell a good merchantable title.

I would suggest that a copy of the Bond for title to-

gether with such transactions that may have been had with reference thereto be furnished you, so that it can be ascertained if it has any legal status upon the land in question at this time.

I am herewith returning abstract and papers which you delivered to me, also a form of deed to be executed in this matter.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

DEED TO CERTAIN LANDS NEAR OCALA
EXAMINED—BOUGHT BY THE STATE.

Tallahassee, Fla., November 16, 1917.

*Hon. J. C. Luning, State Treasurer,
Tallahassee, Florida.*

Dear Sir:

I have examined the deed executed by Jennie A. Bell and her husband, C. S. Bell to the Board of Commissioners of State Institutions conveying certain land in Marion County, Florida, and described as follows, to-wit:

"Commencing at the middle of the East boundary line of the Alvarez Grant, in Township Fifteen, South, Range Twenty-two East, in Marion County, Florida, running thence West eight chains and ninety-seven links, thence North twenty-five chains and forty-eight links; thence East eight chains and ninety-seven links; thence South twenty-five chains and forty-eight links to the point of beginning; containing twenty-two and 86/100 acres, more or less;"

And upon such investigation I find that the said deed

is in due and legal form and conveys to the Board of Commissioners of State Institutions a fee simple title to said land.

Upon the satisfaction of the mortgage held by the Ocala National Bank upon the above described property, I would advise the payment of the amount agreed upon as the purchase price thereof.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

RELEASE OF MORTGAGE TO CERTAIN LANDS
PURCHASED BY THE STATE.

Tallahassee, Fla., November 20, 1917.

*Hon. J. C. Luning, State Treasurer,
Tallahassee, Florida.*

Dear Sir:

I have examined the release of mortgage from Ocala National Bank to Mrs. Jennie A. Bell and her husband, upon the following described lands:

"Commencing at middle of East boundary of Alvarez Grant in Township Fifteen (15) South, Range Twenty-two (22) East, West 8.97 chains, North 25.48 chains, East 8.97 chains, South 25.48 chains, containing 22.86 acres, more or less."

I beg to advise the release appears to be in due and legal form.

I am herewith returning the release of mortgage to you.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

INSURANCE—STATE TREASURER'S CERTIFICATE REQUIRED OF ALL LODGES ISSUING INSURANCE CERTIFICATES.

Tallahassee, Fla., May 29, 1918.

*Hon. J. C. Luning, State Treasurer,
Capitol.*

Dear Sir:

I am in receipt of your letter of the 24th instant which reads as follows:

"The Legislature of 1915, passed an Act relating to the regulations, supervision and control of fraternal benefit societies in this State (Chapter 6970). Section 29 of this Act was amended by the Legislature of 1917 (Chapter 7344). Section 29 of the law as amended now reads:

'Nothing contained in this Act shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the Supreme Lodge of Knights of Pythias) or societies which limit their membership to any one hazardous occupation, nor to *similar societies* which do not issue insurance certificates * * *'

"There is in existence in this State a fraternal order called 'The Independent Order of Odd Fellows.' This society or association is composed of white men and does not issue insurance certificates or guarantee death benefits. There is in existence in this State a colored organization under the name of 'District Grand Lodge No. 27 Grand United Order of Odd Fellows of the State of Florida.' Under the charter granted this latter association there is in existence an association composed of the members of the District Grand Lodge G. U. O. of O. F. under the name 'Endowment Association of the District Grand Lodge No. 27 G. U. O. of O. F. of the

State of Florida.' This endowment association exists under the authority of the fraternal order and issues to its members benefit certificates providing for payments to the beneficiaries of its members. The officers of the Endowment Association are elected from its membership and are not necessarily the officers of the Fraternal Association.

"Will you please give me your opinion as to whether or not the provisions of Chapter 6970 applies to the 'Endowment Association of the District Grand Lodge No. 27, G. U. O. of O. F. of the State of Florida.'"

Replying to the above communication, I beg to advise that I do not think the statute referred to above ever contemplated, nor did the Legislature intend that the exemption from the operation of this statute which is provided for in Section 29 of said Chapter 6970 as amended by Chapter 7344, should apply to an order such as you mention in your letter, to-wit: An Association which issues to its members benefit certificates providing for payments to the beneficiaries of its members, although such organization adopts and incorporates in its name the words "Odd Fellows." In enacting the provisions of Section 29, above referred to, the Legislature seems to have had in view only such lodges and associations as *do not* issue insurance certificates.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

Opinions to Commissioner of Agriculture.**COUNTY CONVICTS—AUTHORITY OF COUNTY COMMISSIONERS TO LEASE OUT WHITE COUNTY CONVICTS.**

Tallahassee, Fla., February 1, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Capitol.*

Dear Sir:

Your request for an opinion, dated January 31, 1917, has been received, reading as follows:

"I will thank you to give me your opinion as to whether or not counties have a right to lease out white men who have been convicted of misdemeanors and sentenced to a term in the county jail. I have had some inquiries from counties who have been leasing out their white prisoners and am anxious to give them a hearing, and will appreciate your legal advice as soon as it is convenient."

Replying to above will advise that I know of no law in this State which prohibits the county commissioners of the respective counties leasing out white men who have been convicted of misdemeanors and sentenced to a term in the county jail.

You very likely have confused the law providing for the grading and leasing of State convicts with the law providing for the leasing of county convicts.

Yours very truly,

T. F. WEST,
Attorney General.

PURE FOOD AND DRUGS NOT MISBRANDED
WHEN LABEL DIFFERS FROM LEGEND
BLOWN IN BOTTLE.

Tallahassee, Fla., June 2, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Capitol.*

Dear Sir:

Your communication of this date has been received.

I note your inquiry as follows:

"I would be pleased to have your opinion as to whether or not soft drinks, other than Chero-Cola or Coca-Cola, when put in Chero-Cola bottles, with the words 'Chero-Cola' or 'Coco-Cola' blown in the glass, with the true name of the contents together with all other information required by law to appear upon the labels shown on the bottle caps, would be misbranded within the meaning of the First, Second and Fourth Paragraphs, under the sub-head, 'In use of Food,' of Section 5 of Chapter 6122, as amended by Chapter 6541, Laws of Florida, Acts of 1911."

Replying to above will state that it is obvious that under the second paragraph of Section 3 of Chapter 6122, Laws of Florida, 1913, any authorized rule or regulation relative to "Foods" would necessarily apply to beverages of the kind designated in your communication and the samples furnished this office.

It will be observed that Section 5 of said act provides that the term "misbranded" applies to all articles of food "the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular."

It is my understanding that it has been the ruling of your department that an appropriate label cap placed

upon glass bottles containing ordinary soft drinks sufficiently "labels" the contents thereof. The question, therefore, is whether or not, in addition to above, the legend, "Chero-Cola. 6 1-2 Fluid Oz. Pensacola, Fla. This Bottle Never Sold," blown in the side surface of the bottle when containing soda water beverages, with label cap thereon containing, for example, the words "Strawberry. Artificial Flavor and Color" falls within the prohibition of Sections 3 and 5 of the said Act of 1911.

My opinion is that in this case the said legend as blown in the bottle, title to which in this instance never passes from the owner, is not false or misleading, but serves only to identify the bottle or container, as it does not undertake to describe the real contents, and, so far as the pure food law is concerned, this legend would not prohibit the use of the same bottle as a container for other soft drinks, provided such soft drinks have a proper label cap, as it would not deceive the purchaser.

As to whether or not the use of the bottles having the blown-in legend described above by persons who may have no authority to do so is a violation of a trade mark law, is a question this office is not called upon to answer.

Respectfully submitted,

T. F. WEST,
Attorney General.

MARKETING COMMISSIONER—APPROPRIATION
FOR SALARY AND TRAVELING EXPENSES.

Tallahassee, Fla., July 12, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Capitol.*

Dear Sir:

Yours of the 5th instant has been received.

I note your inquiry as follows:

"I am herewith handing you copy of Chapter 7315,

Laws of 1917, the same being an Act creating a State Marketing Bureau.

"I will thank you for your opinion regarding the appropriation as mentioned in Section 3 of this Act, and whether or not in your opinion the salary and traveling expenses of the Marketing Commissioner is inclusive or exclusive of the \$15,000.00 appropriation mentioned in said section. You will note that Section 2 provides that the Commissioner shall be paid as salary the sum of \$2,500.00, and traveling expenses not to exceed \$1,200.00."

The provision of this statute containing apt language to appropriate public funds is section 3, wherein the sum of \$15,000.00, or so much thereof as may be necessary, is expressly set apart for the purpose of meeting the expenses of the Marketing Commissioner.

In Section 2 of this act the salary of the Commissioner is fixed and an allowance for his traveling expenses is authorized, but there is in that section no express appropriation of public funds to pay such salary and traveling expenses as a separate and distinct matter from the expenses of the Marketing Commissioner provided for in Section 3.

In this situation it is advisable, at least for the present, I think, to assume that the salary and traveling expenses of the Commissioner are included in the \$15,000 appropriated by Section 3 of the act.

Respectfully submitted,

T. F. WEST,
Attorney General.

FISHING—WHETHER LICENSE REQUIRED OF
BOATS AND INDIVIDUALS UNDER VARIOUS
CIRCUMSTANCES NAMED.

Tallahassee, Fla., August 13th, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Tallahassee, Fla.*

My Dear Sir:

I am in receipt of your letter of the 11th instant asking for my opinion upon the following questions:

"1. Under "Alien or Non-Resident Boat Tax" is a boat owned by a citizen of the State of Florida required to pay the alien boat tax of \$10.00 when an alien or non-resident is fishing on same.

2. Under "Alien or Non-Resident Fishing Tax" do all of the crew engaged in operating the boat, provided they are aliens, have to pay the \$10.00 "Alien or Non-Resident Fishing Tax?" I mean in this connection cook, engineer or other employee who not, on account of their position, engage in the taking of fish or oysters from the salt waters of this State for any purpose other than his own individual use.

3. When the Captain of a freight and passenger boat carries fish as freight and peddles the fish at destination, is such Captain subject to pay retail license as provided in Section 14, Chapter 6877, Acts of 1915, and is the vessel subject to the boat license as provided in this same Section?

4. When a person for hire on commission or wages sells, by peddling or retail, the catch of another fisherman without buying such catch, is such person liable for retail dealers' license, or is the owner of the fish who has them peddled liable for the retail dealers' license?

5. When the fisherman retails his own catch of fish, shrimp or crabs is he subject to a retail dealers' license?

6. When a person is not interested as joint owner or partner helps, for accommodation, another retail his fish, is such helper subject to pay a retail dealers' license?

7. A partnership is authorized to do wholesale business on a license for such firm, but is that true in retail business. In retail fish business does each partner have to take out license, and if so, how about hired help who sells fish, shrimp, clams or oysters for retail dealers?

8. Are licenses issued for fish dealer's transferable? See Section 16, Chapter 6877, Acts of 1915."

Replying to your inquiry:

1st. I do not think the license tax of ten dollars required for each boat operated in whole or in part by an alien or non-resident would apply to a boat owned by a citizen of the State, when an alien or non-resident is fishing on the same, as an employee.

2nd. Our Supreme Court said in the case of *Ex Parte Gillette*, 70 So. 446, that "The provision of Chapter 6877 requiring an alien or non-resident to pay a license tax of \$10 per annum before they can "engage in taking fish or oysters from the salt waters of this State for any purpose other than his own individual use" applies to aliens or non-residents of the State who "engage in taking fish or oysters" on their own account, not to laborers who are employed to take fish or oysters for their employers." Therefore, I do not think that the crew of a boat, who are aliens, are required to pay the license tax required of aliens and non-residents, where such crew is employed by the operator of the boat.

3rd. I think that any person who peddles fish for himself, that is to say, owns the fish and peddles them, would be considered a dealer, and should pay a license tax therefor.

4th. I do not think a person who is employed to sell fish, by peddling or otherwise, for another is subject to pay a license tax. I think the owner of such fish should pay the license tax required of retail dealers.

5th. When a fisherman retails his own catch of fish, he becomes a retail dealer, and should be required to pay a license tax therefor.

6th. I do not think a person who is not interested either as joint owner or partner, but simply helps another to retail fish, should be required to pay a license tax as a retail dealer.

7th. It is my opinion that there may exist partnerships in the business of retail dealers in fish and that in such cases a license tax for such firm would be sufficient, when such partnership was entered into in good faith and actually exists.

8th. Section 16, of Chapter 6877, provides that,

"These licenses shall always be subject to inspection by the Shell Fish Commissioner, his deputies or agents, and shall not be good for any vessel or owner, other than that for which issued."

I do not think that licenses issued to fish dealers are transferable.

Respectfully submitted,

T. F. WEST,

Attorney General.

FISHING—DEALERS IN CRABS AND SHRIMP SUBJECT TO SHELLFISH LICENSE TAX.

Tallahassee, Fla., August 16, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Tallahassee, Florida.*

My dear Sir:

I am in receipt of your letter of the 13th instant making the following inquiry:

"Are fishermen for and dealers in shrimp and crabs

subject to pay license, and if so, under which Act, the Oyster or Salt Water Fish?

If shrimp is a shellfish and comes under the Oyster Law, are canners subject to the tax of \$2.00 per lineal foot for each steam box in use, under Section 10, Chapter 6532, Acts of 1913?"

Replying to your inquiry beg to advise that shellfish is defined as follows:

"A shellfish is any aquatic animal whose external covering consists of a shell, either testaceous, as in oysters, clams, and other mollusks, or crustaceous, as in lobsters or crabs. The term is chiefly applied in commerce to crabs, lobsters, and crawfish, oysters, mussels, periwinkles, and whelks. Thus an act relating to oysters alone is not repealed by one relating to shellfish in general." *White v. Hill*, 34 S. E. 432, 433, 125 N. C. 194.

It is my opinion that shrimp and crabs would, under this definition be classed as shellfish, and that the provisions of Chapter 6877, Acts of 1915, Laws of Florida, would be applicable to fishermen and dealers therein.

Section 1, Chapter 6532, contains the following provision:

"The words shell fish shall be construed to be oysters, clams and welks, and the powers and authority herein conferred upon the Shell Fish Commissioner, as named herein, shall only relate to oysters, clams and welks."

This provision of law limits the kind of shell fish included in its provisions (Chapter 6532, Acts of 1913, Laws of Florida), to oysters, clams and wilks. I am, therefore, of the opinion that Section 10 thereof does not apply to shrimp and crabs.

Respectfully submitted,

T. F. WEST,

Attorney General.

FISHING—LEGAL NETS FOR SHAD AND HER-
RING FISHING, ETC.

Tallahassee, Fla., September 1, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
The Capitol.*

My dear Sir:

I am in receipt of your letter of the 28th ultimo stating that the Shell Fish Commissioner desires my opinion on the following:

"1. Section 4, Chapter 6877, reads as follows: 'No person shall place out in the rivers of the State of Florida any gill-net for the capture of shad of a less size than two and one-half inch bar from knot to knot, or five-inch stretched mesh from knot to knot.' I desire to know if the law prevents or forbids the use of any other kind of nets in fishing for shad. And if nets other than gill-nets can be used, can the mesh be smaller than two and one-half inch bar from knot to knot, or five-inch stretched mesh from knot to knot.

"2. Section 2, Chapter 6877, reads as follows: 'It shall be, from and after September 30th, 1915, unlawful for any person, persons or corporation to catch any fish in any of the salt waters of the State of Florida with any seine, gill-net, pocket-net or any other kind of net of less size than one and one-half inch bar, measured from knot to knot, or a stretched mesh of three inches from knot to knot after being tarred or shrunk.' Mr. Williams advises that herring fishing cannot be successfully carried on with such a net. The flesh of the herring is soft and if gilled is bruised and injured for market. Did the legislature intend that herring should be caught with a net of no less size than the one described in this section?"

"3. Does the act of 1915, known as the Salt Water Fish Law, repeal the act of 1897 regulating the size of mesh to be used in fishing for fresh water fish?"

Replying to your first inquiry the only other general provision of law upon the subject of fishing for shad with seines is Section 3779, Compiled Laws of Florida, 1914, which reads as follows:

"3779. (2760). Fishing for Shad and Food Fishes with Certain Nets or Seines.—Whoever uses in the rivers of the State any gill-nets for the capture of shad with a mesh less than five inches from knot to knot measured length-wise, that is to say, a mesh when brought to a square, the sides of which are not less than two and one-half inches; or whoever uses a seine for the capture of any of the food fishes, with a mesh less than three inches from knot to knot, measured lengthwise, that is to say, a mesh when brought to a square the sides of which are not less than one and one-half inches, shall be punished by a fine not exceeding thirty dollars for each offense, and by the confiscation of all nets, boats, tackle and appliances used in such unlawful act. This section shall not prevent any person from using a net or seine with a smaller mesh for the purpose of catching minnows for bait or fish for his own private use."

From this provision of law and the provisions of Section 4, of Chapter 6877, it appears that there is no prohibition upon the use of other kinds of nets in fishing for shad. The above quoted section provides for a different size mesh in seine when used for the capture of any food fish.

Answering your second inquiry beg to advise that Section 2, of Chapter 6877, is clear in its terms and I cannot say that it was the intention of the legislature to make any exception in the case of fishing for herring, when there is nothing in the law from which such an inference might be drawn.

Answering your third inquiry, the title to Chapter 6877, Acts of 1915, reads as follows:

"An Act to Protect and Regulate the Salt Water Fishing Industry of the State of Florida, and to provide Penalties for the Violation of this Act."

From the title above quoted it is clear that this act, Chapter 6877, has nothing to do with regulating the fishing for fresh water fish.

Respectfully submitted,
VAN C. SWEARINGEN,
Attorney General.

PRISONER—WHEN SENTENCES IMPOSED AT SAME TERM RUN CONCURRENTLY.

Tallahassee, Fla., September 4, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Capitol.*

Dear Sir:

Your communication of August 30 duly received with reference to State prisoner No. B-677, H. B. Wilson, transmitting therewith copies of two informations upon which two convictions were had and for which two sentences of two years each were imposed at the same term of the court.

I note that you desire to be informed as to whether or not this prisoner's sentences aggregate four years or whether they run concurrently.

I find that the two commitments are identical in that each is based on informations charging entering a building in the night time, but that one of them has the notation "second sentence" and the other "first two-year sen-

tence." I find that the judgments or sentences which you attach to your communication show that they are identical in every particular, neither sentence containing a statement that it was to begin and run after or from the expiration of the sentence in the former case, or words to that effect.

We have no statute in this State touching upon the subject of imposing cumulative or successive sentences. We would, therefore, have to be governed by the common law (Sec. 2194, Gen. Stats.). The rule of the common law is that if an imprisonment is to commence upon the expiration of a previous one, the sentence must so state, else the two punishments will run simultaneously or concurrently.

2 Bishop's New Crim. Proc. (2 ed.), Sec. 1310. Wharton's Crim. Plead & Prac., Sec. 933.

The above rule is sanctioned *orbiter dictum* by our Supreme Court in its decision in the case of Wallace v. State, 41 Fla. 45, 26 So. 713.

In fact, the great weight of authorities is to the effect that if the court imposing more than one sentence on the same prisoner desires to have one sentence begin upon the expiration of another, it must expressly so state in the last sentence imposed, otherwise it will not be considered cumulative, but would run concurrently.

8 R. C. L. 242. 7 L. R. R. (N. S.) y24.

It is, therefore, my opinion that the sentences, which really control in the matter, do not authorize the confining of this prisoner longer than two years, even though the officers of the court might have understood differently, the rule being well settled that the officers executing judgments must look to the record itself to determine their authority in cases of this kind and not to any parol statement or extraneous understanding.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

FISHING—AUTHORIZED LENGTH OF SEINE AND
SIZE OF MESH OF POCKET—JURISDICTION
OVER FISH IN WATERS OF STATE, ETC.

Tallahassee, Fla., September 20th, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of September 12th stating that the Shell Fish Commissioner desires my opinion on the following questions:

"1. Is it lawful to fish a seine of a greater length than three hundred and fifty yards in St. Lucie County?

"See sections three and thirteen of Chapter 6788, Acts of 1915. And special Act prescribing the mesh of haul seines and drag nets to be used in St. Lucie County of 1915.

"2. Is it unlawful to use a net or seine with a pocket of less than three-inch mesh? And is the pocket a part of the seine?

"The local judge holds that the pocket is no part of the seine.

"3. Has the State of Florida jurisdiction over the fish within the limits of said State?

"See Section 1, Chapter 6877, Acts of 1915."

Replying to your inquiry, I beg to advise as follows:

1st. Section 3 of Chapter 6877, Laws of Florida, Acts of 1915, provides:

"Sec. 3. It shall be unlawful for any seine, gill-net, haul-nets or any other kind of nets of a greater length than three hundred and fifty yards to be set, fished or used in the salt waters of this State, or for any seine, gill-net, stop-net, haul-net, or any other kind of net to be attached together in any manner, making a length of more

than three hundred and fifty yards, * * * Provided, however, that the net or nets of a length of more than three hundred and fifty yards may be used in regular mullet or mackerel fishing."

In view of this provision of law it is my opinion that it is unlawful to fish a seine of a greater length than three hundred and fifty yards in St. Lucie County, except in such fishing as is within the provisions of the above quoted proviso.

2nd. Section 2 of the above mentioned Chapter provides as follows:

"Sec. 2. It shall be, from and after September 30, 1915, unlawful for any person, persons, firm or corporation to catch any fish in any of the salt waters of the State of Florida with any seine, gill-net, pocket-net or any other kind of net of less size than one and one-half inch bar, measured from knot to knot, or a stretched mesh of three inches from knot to knot after being tarred or shrunk."

This section answers the second question contained in your inquiry. It covers a net with pockets by mentioning pocket-nets, which as I understand should have the same size mesh as seines, etc.

3rd. The State of Florida has jurisdiction over the fish within its limits as provided by Section 1 of Chapter 6877, Laws of Florida, Acts of 1915.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

FISHING—HAUL SEINE AND DRAG-NET
DIFFERENTIATED.

Tallahassee, Fla., September 21, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 13th inst., stating that the Shell Fish Commissioner desired my opinion upon the following:

"Section 13, Chapter 6877, Acts of 1917, reads as follows:

'It shall be unlawful for any person, persons, firm or corporation to take or catch any fish with haul seines or drag-nets in any or all of the salt waters of the counties of Volusia, Brevard, St. Lucie, Palm Beach, Broward, and all salt waters in Dade County north of Biscayne Bay.'

Is the word drag-net a synonym of seine, or did the legislature mean to describe a different device from what is commonly known as a seine, or in other words, is it unlawful to fish with a net that is not commonly called a seine but fished with in the same manner?"

It was evidently the intention of the legislature to prohibit the use of haul seines and drag-nets in the waters above mentioned, and by using both terms "haul seines" and "drag-nets" it must have had in mind that the two were not the same. These terms seem not to have been judicially defined. As I understand, a haul seine is different from a drag-net in that the latter is a net the webbing of which is constructed of heavy material, double lead lined and constructed so as to be hauled with a windless by hand or with a launch.

The statute clearly prohibits the use of either haul seines or drag-nets in waters mentioned in the above quoted section.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

COMMERCIAL FERTILIZERS — MANUFACTURERS
AND IMPORTERS REQUIRED TO FILE NAME
OF AGENT IN THIS STATE.

Tallahassee, Fla., October 9, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Tallahassee Florida.*

Dear Sir:

I am in receipt of your letter of September 15th, which reads as follows:

“Section 5, of Chapter 4893, Acts of 1901, as amended by Chapter 5660, Acts of 1907, better known as the Florida Commercial Fertilizer Law, reads as follows:

‘Section 5. Any manufacturer or importer of, or agent for the sale of commercial fertilizers, previous to offering the same for sale in this State, shall file with the Commissioner of Agriculture annually a paper giving the name of his principal agent or agents in the State of Florida, also the name and guaranteed analysis, under oath, of the fertilizer or fertilizers offered for sale by him, and any manufacturer, importer or agent who shall refuse to give the information herein required, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined five hundred dollars for each offense.’

Section 15, of the Act above referred to, reads as follows:

'Section 15. The Commissioner of Agriculture shall have the authority to establish such rules and regulations in regard to the inspection, analysis and sale of fertilizers, chemicals and cotton seed meal not inconsistent with the provisions of this Act, as shall in his judgment will best carry out the requirements thereof.'

As contemplated under the Act as above referred to certain manufacturers, importers and agents for the sale of commercial fertilizers have filed in this office a paper containing the name and guaranteed analysis, under oath, of the fertilizers offered for sale by them, and stating further that they maintain no agency in this State.

I would appreciate your advising me in view of this statement of facts, whether or not this Department will be authorized to require such manufacturers and importers to maintain an agency in this State, and if such agency is not named in their application for registration, would I be authorized to refuse to accept such applications for registration?

Would sales by manufacturers or importers of commercial fertilizers through a broker residing in this State constitute an agency under the Act as above referred to?"

Replying to the above, will advise that, under the provisions of Sections 5 and 15 of the Act referred to in your communication, it is my opinion, that the Department of Agriculture would be authorized to make a regulation which would require all manufacturers or importers or agents for commercial fertilizers to maintain an agent or an agency in this State, and that the same be named in application, and, upon failure to comply therewith, to deny the application for registration.

I think you would also be authorized to provide in said regulation, that the term "agent" or "agency" would be held to include a broker or brokers residing in this State. In other words: A broker is nothing more nor

less than an agent employed to effect bargains between other persons.

It was, evidently, the purpose of the law in question to require the naming of a resident firm or person as agent, in order that the authority of this State would have a representative upon whom process of the State courts could be served in order to fix legal responsibility for any damages incurred by users of commercial fertilizers.

Respectfully submitted,
 VAN C. SWEARINGEN,
 Attorney General.

SPONGE FISHING—INFORMATION TO BE FURNISHED IN APPLICATION FOR LICENSE TO TAKE SPONGES FROM STATE WATERS.

Tallahassee, Fla., October 16th, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
 Tallahassee, Fla.*

Dear Sir:

I am in receipt of your communication of the 15th inst. as follows:

"Hon. J. A. Williams, Shell Fish Commissioner, forwarded to my office applications for sponge licenses. And as he failed to give the length and beam of the boats he desired licensed, I returned the applications to his office and requested him to furnish this information. It seems to me that it is necessary to show the length and beam of the boats in the licenses in order to be able to identify them.

"Mr. L. S. Moody, Secretary to Hon. J. W. Williams,

returns the applications referred to above with the attached letter.

"I respectfully refer you to Section 6, Chapter 7289, Acts of 1917, and request your opinion on the matter.

"As I am holding up licenses amounting to something over three hundred dollars, I shall thank you for your very earliest consideration of this matter."

Replying to your inquiry, I beg to advise that Section 6 of Chapter 7389, Laws of Florida, Acts of 1917, provides in part as follows:

"Sec. 6. Any and all boats or vessels engaged in the sponge industry in the waters of the State, before beginning operation, must first procure a police license from the Commissioner of Agriculture and for this purpose the owner, captain or agent of such vessel or boat must present in writing to the Commissioner of Agriculture an application setting forth the name and description of such vessel or boat, the name and postoffice of the owner whether such boat or vessel is to be used for diving or hooking, and any such other information as the Commissioner of Agriculture shall deem necessary, on blanks to be furnished by the Commissioner of Agriculture and thereupon the Commissioner of Agriculture shall register such boat or vessel and issue necessary license on payment of the tax herein provided for. Such licenses shall be procured on or before the first day of October of each year."

It is my opinion that the requirements of the above provision of law should be complied with before the Commissioner of Agriculture is authorized to issue a license for a boat or vessel to engage in the sponge industry in the waters of this State.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

FISHING—ALIENS EMPLOYED BY RESIDENT
CORPORATION OWNED BY NON-RESIDENTS
REQUIRED TO PROCURE ALIEN LICENSE.

Tallahassee, Fla., October 19th, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of October 1st, as follows:

"Will you please advise me if a company, composed of non-residents, doing business in this State, incorporated under the laws of the State of Florida, is exempt from the non-resident boat tax and the non-resident fishing tax referred to in Section 14, Chapter 6877, Acts of 1915."

Below is a copy of letter from Hon. John W. Martin, Jacksonville, Florida, which prompts this request:

"There seems to have been considerable correspondence between the Shell Fish Commissioner and B. F. Trenary of the Fant Fish Company in regard to licenses on certain boats operated at Eau Gallie, Florida, by the said company. I am going to apply to the Governor this week for Letters Patent for this company, and would it not be possible that the extra amount of taxes demanded by the State for a non-resident for fishing in Florida waters be waived by you in this case, because one of the partners of this firm technically is not a resident of the State,

"I would appreciate your taking this matter up with the Shell Fish Commissioner, and I will see that these people are incorporated under the laws of the State of Florida.

Awaiting your early reply, I beg to remain."

Replying to your inquiry, I beg to advise that the first paragraph of Section 14 of Chapter 6877, Laws of Florida, provides as follows:

"No person, persons, firm or corporation, shall engage in the business of wholesale fish dealer until such person, persons, firm or corporation shall have first procured an annual fish dealer's license from the Commissioner of Agriculture of the State of Florida, for which a charge of ten dollars shall be made. All retail fish dealers shall pay a license tax of five dollars per annum. A wholesale fish dealer shall be considered any one who sells fish to a retail dealer other than the person who catches the fish, and a retail dealer shall be considered any one who sells fish directly to the consumer; Provided, however, that any one holding a merchandise license may sell salt cured fish without payment of such retail dealer's license."

In addition to this license above required, it is provided in the fifth paragraph of Section 14, as follows:

"An additional license tax of ten dollars shall be required of all aliens or non-residents of the State of Florida on each boat or vessel engaged in the fishing industry in this State, operated in whole or in part by such alien or non-resident, in addition to the boat license tax required in this section. The failure of any alien or non-resident to secure such additional license, for such boats, before engaging in the fishing industry in this State will be considered a violation of this Act."

It is further provided in the sixth paragraph of the said Section 14, as follows:

"Whoever being an alien or non-resident of this State, and who shall engage in taking fish or oysters from the salt waters of this State for any purpose other than his own individual use, shall be required to pay a license tax of ten dollars per annum. Such alien or non-resident shall make application to the Commissioner of Agriculture, over his own signature, for such license on blanks furnished by the Commissioner of Agriculture, which shall set forth the nationality of such alien or non-resi-

dent, local address and such other information as may be required by the Commissioner of Agriculture."

From the provisions of law above quoted, it would seem, that it was the intention of the Legislature in enacting this law that a license tax of ten dollars should be required of all aliens or non-residents of this State on each boat or vessel engaged in the fishing industry operated in whole or in part by an alien or non-resident, and that an alien or non-resident who shall engage in taking fish or oysters from the salt waters of the State shall pay a license tax of ten dollars per annum.

I do not see how the incorporation of a company would relieve such company of the tax provided to be paid by non-residents and aliens, when such boats or vessels are operated in whole or in part by non-residents or aliens.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

SHELL FISH—ALIEN MAY BE A PERMANENT
RESIDENT OF STATE.—SHELL DEPOSITS NOT
SUBJECT OF SALE FOR ROAD PURPOSES BY
COMMISSIONER.

Tallahassee, Fla., November 15, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 14th instant as follows:

"I am in receipt of letters from Hon. J. A. Williams, Shell Fish Commissioner, requesting your opinion on the following:

"1. Has Section 3792, of Florida Compiled Laws Annotated, published by the West Publishing Company, or paragraph 1 of Chapter 5241, Acts of 1903, been repealed. And in the meaning of the law referred to above can an alien be a permanent resident of the State of Florida.

"2. Under Section 14, Chapter 6877, Acts of 1915, do all of the crew engaged in operating the boat, provided they are aliens, have to pay the \$10.00 Alien or Non-resident fishing tax. I mean in this connection cook, engineer or other employee of boats engaged in the fishing industry for any purpose other than his own individual use. And is the boat liable for an additional tax of \$10.00 for each alien or non-resident fishing thereon.

"3. Has the Shell Fish Commission or the Commissioner of Agriculture the right or power to sell any shell deposits or what is generally known as "Shell Banks" for road purposes or any other purposes. See Section 1 of Chapter 6532, Acts of 1913."

Replying to your inquiry I beg to advise,

1st. That Section 3792, Compiled Laws of Florida, 1914, appears not to have been repealed. I think that an alien can be a permanent resident of the State of Florida within the meaning of the above provision of law.

2d. In a former communication to you upon this subject we advised as follows:

"Our Supreme Court said in the case of *Ex Parte Gillette*, 70 So. 446, that 'The provision of Chapter 6877 requiring an alien or non-resident to pay a license tax of \$10.00 per annum before they can 'engage in taking fish or oysters from the salt waters of this State for any purpose other than his own individual use' applies to aliens or non-residents of the State who 'engage in taking fish or oysters' on their own account, not to laborers who are employed to take fish or oysters for their employers.' Therefore, I do not think that the crew of a boat, who are

aliens, are required to pay the license tax required of aliens and non-residents, where such crew is employed by the operator of the boat."

3d. I do not think the Shell Fish Commissioner or the Commissioner of Agriculture has the right or power to sell any shell deposits for road purposes or any other purposes.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

FISHING—BOATS EMPLOYING ALIENS SUBJECT
TO ALIEN LICENSE TAX FOR EACH ALIEN OR
NON-RESIDENT.

Tallahassee, Fla., November 24, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of this date, which reads as follows:

"I am in receipt of letter from Hon. J. A. Williams, Shell Fish Commissioner, requesting your opinion on the following:

'Are boats engaged in the fishing industry subject to an additional license tax of ten dollars for each and every alien or non-resident employed thereon. See Section 14, Chapter 6877.'

Replying to your inquiry, I beg to advise that paragraph 3 of Section 14, Chapter 6877, Laws of 1915, provides for a license on boats engaged in the salt water industry. The fifth paragraph of this same Section provides as follows:

"An additional license tax of ten dollars shall be required of all aliens or non-residents of the State of Florida on each boat or vessel engaged in the fishing industry in this State, operated in whole or in part by such alien or non-resident, in addition to the boat license tax required in this Section. The failure of any alien or non-resident to secure such additional license, for such boat, before engaging in the fishing industry in this State shall be considered a violation of this Act."

As I understand the above quoted provision of the law, the license is required of an alien or non-resident when such alien or non-resident operates the boat, and that it shall be paid by such alien or non-resident when operating the boat in addition to the regular boat license. I do not think that it was intended by this paragraph of the law to require an additional license of ten dollars for every alien who may be engaged on a boat operated by an alien or non-resident, but that it applies only to aliens and non-residents when the boat, or boats, are operated by such persons.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

SHELL FISH—ALIEN AND NON-RESIDENT
 LICENSE TAX,—CULLERS MAY BE LIABLE
 FOR TAX.

Tallahassee, Fla., February 1, 1918.

*Hon. W. A. McRae, Commissioner of Agriculture,
 Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 31st ult., which reads as follows:

"I am in receipt of a letter from Hon. J. A. Williams, Shell Fish Commissioner, requesting me to submit the following to you for your opinion:

'Are aliens or non-residents of this State who engage in taking oysters from the salt waters of the State of Florida for any purpose other than their own individual use required to pay an alien or non-resident tax of \$10.00 as provided in Section 14, Chapter 6877, Acts of 1915? And if such persons are liable for this tax, then are aliens or non-residents who assist as cullers in gathering oysters also liable for such tax?'"

Replying to your communication, I beg to advise that the sixth paragraph of Section 14, of Chapter 6877, Laws of Florida, Acts of 1915, provides as follows:

"Whoever being an alien or non-resident of this State, and who shall engage in taking fish or oysters from the salt waters of this State, for any purpose other than his own individual use, shall be required to pay a license tax of ten dollars per annum."

The provision of law above mentioned seems to be perfectly clear and answers the question propounded by Mr. Williams.

With reference to the second question as to whether aliens and non-residents who assist as cullers in gathering oysters are liable for the tax above mentioned, I beg to advise that if the persons engaged in this business are considered among those who take fish and oysters from the salt waters of this State, I should think they would also be liable to the tax.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COMMERCIAL FERTILIZERS—REGISTRATION MAY
NOT BE REFUSED ON ACCOUNT OF EXHORBI-
TANT PRICE.

Tallahassee, Fla., February 15, 1918.

*Hon. W. A. McRae, Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Your communication of the 6th instant duly received requesting an opinion as to whether or not you are authorized under the Florida Commercial Fertilizer Statutes to decline to register the products of the Fertile Chemical Company, of Cleveland, Ohio, under the facts stated.

A careful reading of our Statutes, the State Chemist's letter to you under date of November 1, 1917, and the brief of Hon. F. T. Myers, together with your communication, discloses that the only legal point involved is whether or not you could under this law refuse the registration of the Nitro-Fertile brand of liquid fertilizer *upon the ground that the same is considered very exorbitant in price*, as compared with that of other commercial fertilizers containing similar or like ingredients.

Replying to the above, will advise that in my opinion if we give every expression in the Statutes regulating the registration of commercial fertilizers for sale and distribution in this State its full meaning it clearly fails to show that the price charged for the commercial fertilizer is one of the matters required to be stated in the application for registration—it is not, therefore, a prerequisite to registration and there is no room for interpretation or construction. I do not understand that the law would give you such authority to so refuse even by implication.

The general rule for interpretation of directory statutes is stated by our Supreme Court in the case of *Palmer v. Parker*, 52 Fla. 389, 42 So. 398, as follows: "The first rule of construction is that, if the language is clear and admits of but one meaning, the Legislature should be held to have intended what it has plainly expressed, and there is no room for construction."

The well-known authority of Lewis' *Southerland Statutory Construction*, Vol. 2, Sec. 627, lays down the following principle: "When a statute is passed authorizing a proceeding which was not allowed by the general law before, and directing the mode in which an act shall be done, the mode pointed out must be strictly pursued, it is the condition on which alone a party can entitle himself to the benefit of the Statute, and its directions should be strictly complied with."

It perhaps will be conceded that the main purpose of the registration in your office of all commercial fertilizers for sale in this State is to put the purchasers on notice not only as to what ingredients they are buying, but to furnish the purchasers an easy recourse for damages in the event the ingredients do not measure up to the official registration.

It is, therefore, my opinion that you are not clothed with power to refuse to register commercial fertilizers of corporations or persons who have complied with the letter of the law. However, if you are still of the opinion that you have properly construed this law, the point could be definitely and finally determined by mandamus proceedings.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

CITRUS FRUITS—TEST REQUIRED AS TO
MATURITY.

Tallahassee, Fla., June 27, 1918.

*Hon. W. A. McRae, Commissioner of Agriculture,
Tallahassee, Fla.*

Dear Sir:

Your communication duly received to which you attach a letter directed to you from Wilbur L. Tilden, County Solicitor of Orange County; also a letter written by Judge Warlow to Mr. Tilden in reference to Section 1, of Chapter 6515, and Section 15 of Chapter 6541, Laws of 1913.

Replying will state that we fully agree with the conclusions of Judge Warlow that Section 1 of the former Act and Section 15 of the latter Act, being Acts passed at the same session of the Legislature and being laws in *pari materia* they must be construed together; also that a statute covering a particular part of a general subject will operate as an exception to or qualification of the general subject to the extent of the repugnancy. It is doubtless immaterial in this case as to which act actually became effective first.

The provisions of Section 15 of the latter Act authorizes the Commissioner of Agriculture with the advice of the State Chemist to establish rules and regulations not inconsistent with the Act "in conformity with rules and regulations formulated by the United States Department of Agriculture under the Federal Act of June 30, 1906;" therefore any regulation they make "in conformity with the rules and regulations" of the United States Department of Agriculture would have the force of law.

We find that subsequent to the passage of Chapters 6515 and 6541, that the United States Department of

Agriculture, on September 23, 1915, promulgated a definition of "immature" as applied to grapefruit and Florida oranges, in which it is stated that,—

"The Bureau of Chemistry considers all grapefruit to be immature if the juice does not contain soluble solids equal to, or in excess of, 7 parts to each part of acid contained in the juice, the acidity of the juice to be calculated as citric acid without water of crystallization. The Bureau also considers Florida oranges to be immature if the juice does not contain soluble solids equal to, or in excess of, 8 parts to every part of acid contained in the juice, the acidity to be calculated as citric acid without water of crystallization."

It was held in the case of *Sligh v. Kirkwood*, 65 Fla. 123, 61 So. 185 (affirmed in 237 U. S. 52) that the Florida Statute prohibiting the shipment of immature citrus fruits did not interfere with interstate commerce, nor violate the regulations of the National Pure Food Act of June 30, 1906. In fact, at that time no regulation by the Department of Agriculture covering the subject of immature citrus fruits had been promulgated or established. It was also held in the above case that "When Congress does act, and its action covers the subject matter, its action is exclusive as to interference," also that "Until and unless Congress does act, and its action covers the subject matter, the states may act."

Since the above decision was rendered the United States Department of Agriculture issued the regulation of September 23, 1915, quoted above, which, as I understand, has the same force as law as to interstate shipments. The same regulation was adopted by the Department of Agriculture of Florida September 30, 1915. (See Circular in reference to "Immature Citrus Fruits, Laws, Rules and Regulations, Revised August 1, 1917.)

It would seem, therefore, that the standard of maturity adopted by the United States Department of Agriculture would be the one governing as to interstate shipments,

and if the shipment is intrastate it is possible that the maturity test provided in Section 1, of Chapter 6515 would suffice without violating the law of the State, even if it violates a regulation of the Agricultural Department of the State.

It may also be added that the "one-half color" test as to maturity provided by said Section 1 of Chapter 6515 has the same status. In fact, it seems that the color test applies to fruit only when it is "on the tree," and not when the fruit is crated or being prepared for shipment.

In a regulation, or decision formulated by the National Board of Food and Drug Inspection, approved by James Wilson, Secretary of Agriculture of the United States, March 28, 1911, it was held that "the Board recognizes the fact that certain varieties of oranges attain maturity as to size, sweetness, and acidity before the color changes from green to yellow, and this decision is not intended to interfere with the marketing of such oranges."

The National Food Inspectors, as I understand, are required to apply the test of maturity as promulgated by the United States Department of Agriculture, quoted above, and if the shipment reaches another State and they are found to be inferior according to that test, they would be subject to confiscation, etc. Thus it appears that the same regulation adopted by this State ought to apply to interstate shipments as against the provisions of Section 1 of Chapter 6515, Laws of 1913, which has no force as against a regulation of the United States Agricultural Department, except as to *intra-state* shipments.

However, in view of the fact that Criminal Statutes must be construed strictly in favor of an accused, it would seem that if the defendants have not violated the State Law as measured by a State Statute a prosecution could not be legally maintained. These are my views after a hur-

ried search of the law, and I realize the facts present a complicated legal question which I have no authority to settle.

Respectfully submitted,
 VAN C. SWEARINGEN,
 Attorney General.

CITRUS FRUITS—STANDARD OF MATURITY.

Tallahassee, Fla., August 12, 1918.

*Hon. W. A. McRae, Commissioner of Agriculture,
 Capitol.*

Dear Sir:

I am in receipt of your communication of the 8th instant enclosing letter from State Chemist, Hon. R. E. Rose, to you under date of August 6th with reference to the matter of the enforcement of the immature citrus fruit law of this State.

Replying to your communication, I beg to advise that I concur in the communication from this office to you and Hon. R. E. Rose, State Chemist, under date of September 28, 1915, upon the subject of your inquiry. This communication is found on page 5 of pamphlet "Immature Citrus Fruits," etc.

By Section 15 of Chapter 6541, Laws of Florida, Acts of 1913, the standard for immature citrus fruits promulgated by the United States Department of Agriculture was adopted as the standards for such fruit in this State.

Yours very truly,

VAN C. SWEARINGEN,
 Attorney General.

STATE CHEMIST—FORM OF CERTIFICATES OF ANALYSIS.

Tallahassee, Fla., August 16, 1918.

*Hon. W. A. McRae, Commissioner of Agriculture,
Capitol.*

Dear Sir:

I am in receipt of your letter of the 15th instant, as follows:

"Please note the attached certificates of analysis by the State Chemist Nos. 2202 and 2203, dated August 9, 1918, reporting the findings in the case of two lots of alleged adulterated Shell Eggs, signed by the State Chemist, Hon. R. E. Rose, and verified by affidavit of Mr. J. Frank Smith, Food, Drug and Fertilizer Inspector, and advise whether or not, in your opinion, proceedings should be instituted against violators of the Food and Drug Act, except as provided under Section 12 of the said Act, which specifically specifies the manner in which official sampels shall be reported."

Replying to this communication, I beg to advise that the certificates of analysis, attached to your letter, do not seem to conform to the provisions of Section 12, of Chapter 6122, Laws of Florida, Acts of 1911, (Pure Food and Drug Act) with reference to its provisions as to how the certificates of analysis of the State Chemist, or his assistant, shall be verified in order that the same may be considered prima facie evidence in any court of law or equity in this State. It will be observed that these certificates do not contain an affidavit of the State Chemist, or his assistant, nor does there seem to be any provision for making analysis of samples by the Food and Drug Inspectors, which seems to be the case here.

I return all enclosures herewith.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

CONVICTS—REWARD FOR CAPTURE MAY NOT
BE PAYABLE TO STATE EMPLOYEE OF THE
PRISON DEPARTMENT.

Tallahassee, Fla., October 1, 1918.

*Hon. W. A. McRae, Commissioner of Agriculture,
Capitol.*

Dear Sir:

I am in receipt of your communication of the 24th ultimo, in which you set out certain facts with reference to the capture of two State prisoners who were working at a State Road Camp and who escaped and were captured by W. B. Skipper, Convict Guard, who was employed at another State Road Camp and that the mother of Mr. Skipper has made application for the reward for the capture of these prisoners, her son having since died, and note that you desire my opinion as to whether or not under the circumstances a reward should be paid to Mrs. Skipper for the services rendered by her son in capturing these prisoners. Also whether any employee of the State Prison Branch of the State Government is entitled to a reward when occasion arises and he is successful in recapturing a prisoner who has escaped from some camp of the Florida State prisoners.

Replying to your inquiry, I beg to advise that the question of whether or not W. B. Skipper, who was employed as a Convict Guard by the State Road Department at the time he captured the two prisoners mentioned in your letter, which prisoners were working in another State Road Camp, is entitled to the reward offered for the capture of escaped prisoners, is one upon which there does not seem to be any specific statute. The terms of contract of employment existing between Mr. Skipper and the Road Department, together with the regulations of the Board of Commissioners of State Institutions in the

matter of the payment of rewards for the capture of the State convicts are elements that would have to be considered in determining whether or not Mr. Skipper is entitled to the reward. This, as I see it, is a matter within the discretion of the Board of Commissioners of State Institutions and is one for them to decide after having all the facts in connection therewith in its possession.

Replying to your second inquiry, I beg to advise that occasions might arise when employees of the State Prison Branch of the State Government would be entitled to the reward provided for capturing escaped convicts. The facts connected with each individual case should in my opinion be considered by the Board of Commissioners of State Institutions in determining whether such an employee would be entitled to a reward unless said board should promulgate some regulation setting out the exact terms upon which an employee of this Department might receive the reward, in which case, of course, the regulation would govern.

It will be noted by Section 3480-c, Compiled Laws of Florida, 1914, that sheriffs, deputy sheriffs, city marshals, and policemen may accept rewards or remunerations for services performed in apprehending criminals.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General

Opinions to State Superintendent of Public Instruction.

TEACHER'S GRADUATE CERTIFICATE NOT APPLICABLE TO PERSONS GRADUATING PRIOR TO PASSAGE OF THE ACT OF 1917.

Tallahassee, Fla., December 7th, 1917.

*Hon. W. N. Sheats, State Superintendent,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of the 1st instant as follows:

"Please render me your decision on Section 17, Chapter 7372, Acts of 1917, which states that any regular graduate of a standard university, college or normal school that graduated therefrom since June 15th, 1905, etc., may be issued a State Certificate under certain conditions, as to whether or not the Commission provided in this Section will be authorized to issue a State Certificate to one who has graduated in May, 1905, prior to June 15th."

Replying to your inquiry, I beg to advise that Section 17 of Chapter 7372 provides in part as follows:

"Any regular graduate of a standard university, college or normal school having graduated therefrom since June 15th, 1905, desiring to teach in Florida, shall pay a fee of five dollars and file his or her diploma, or a certified copy thereof, with satisfactory evidence of having taught school successfully for twenty-four months, with the State Superintendent of Public Instruction, who with the State Board of Examiners provided for in this Act shall constitute a commission to review and pass upon all applications for certificates based upon diplomas, and if found satisfactory the State Superintendent shall issue a Graduate State Certificate."

It appears that the time fixed in this section for persons to receive certificates to teach upon diplomas from Universities, Colleges and Normal Schools in the year in which a reorganization of all the State Colleges was made (1905) by what is commonly known as the "Buckman Bill," and the month and date thereof is fixed (June 15) at a time subsequent to the graduating and receiving of diplomas from any of the State Colleges in existence prior to the enactment of the "Buckman Bill." It, therefore, appears that it was evidently the intention of the legislature to exclude all those who graduated and received diplomas prior to the date fixed by the Act, namely, June 15th, 1905.

It is my opinion that a person who graduated prior to June 15th, 1905, would not come within the provisions of Section 17 of Chapter 7372, Laws of Florida, Acts of 1917.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SCHOOL TEXT BOOK—UNLAWFUL TO USE ANY
SUPPLEMENTARY BOOK NOT SPECIFIED IN
CONTRACT.

Tallahassee, Fla., March 1, 1918.

*Hon. W. N. Sheats, State Superintendent,
Tallahassee, Florida.*

Dear Sir:

Your communication of the 22d ult., duly received requesting an opinion of this office upon the matter submitted to your office by Hon. F. S. Hartsfield, County Superintendent, Leon County, the same reading as follows:

"The question has arisen as to whether any book aside from the basil and supplementary books adopted may be used in the school. To be more specific, the primary grades have completed both these adopted books but the teacher thinks the children are not yet ready for the first grade. Can she legally use another reader not on the adopted list either as a basil or a supplementary book?"

In answer to the above inquiry, will advise that Section 2, of Chapter 6178, Laws of 1911, as amended by Chapter 7374, Laws of 1917, provides that "it shall not be lawful for any school officer, director or teacher to use any other books upon the same branches, other than those adopted by said State Text Book Commission."

Section 18, of Chapter 6178, as amended by Chapter 7374, Laws of 1917, provides as follows:

"That any teacher who shall wilfully use, or permit to be used in his or her school, any text book upon the branches embraced in this Act, when the Commission has adopted a book upon that branch, other than the one so adopted, the County Board of Public Instruction shall discharge and cancel the certificate of said teacher."

In as much as the reader and supplementary books were adopted for the use of the first grade, it is my opinion that it would be unlawful to use any other books than those specified in the proclamation of the Governor setting out the kind of books that have been officially adopted.

The above quoted provisions of law could scarcely leave any doubt upon the question involved.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

SCHOOL DISTRICT—SPECIAL TAX SCHOOL DISTRICT FUNDS NOT TRANSFERRABLE TO ANOTHER DISTRICT.

Tallahassee, Fla., April 15, 1918.

Hon. W. N. Sheats, Superintendent of Public Instruction, Capitol.

Dear Sir:

Your communication of April 10th, 1918, duly received, asking for an opinion as follows:

"I am asked by a County Superintendent whether a County Board is authorized to transfer Special Tax District Funds from one district to another? The letters asking this question are attached hereto.

"Please give me your opinion on this matter, and return the attached letters with your reply."

Replying to the above will advise that Section 413 of the General Statutes provides that "all special funds collected within a school district shall be disbursed solely for school purposes within the district in which the tax is collected, and, as near as practicable, in the year in which the tax is collected."

From the above and other laws of the State on the question, it is my opinion that a County Board of Public Instruction is not authorized to transfer Special Tax District Funds from one district to another.

I return herewith enclosures mentioned.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SCHOOL DISTRICTS—NO AUTHORITY FOR
SCHOOL BOARDS TO BORROW SINKING FUND
OF ONE DISTRICT TO BE USED IN ANOTHER.

Tallahassee, Fla., April 15, 1918.

*Hon. W. N. Sheats, Superintendent of Public Instruction,
Capitol.*

Dear Sir:

Your request for an official opinion dated April 10, 1918, duly received, the same reading as follows:

"Attached hereto is another letter from the County Superintendent of Volusia County, asking an opinion in regard to the use of Special Tax District Funds. He asks whether the County Board of Public Instruction could borrow the sinking fund of the Special Tax District.

"Please give me your opinion on this matter, and return the attached letter with your reply."

Replying to the above will advise that the first paragraph of Section 17 of Article XII of the Constitution of Florida, provides that "The Legislature May Provide for Special Tax School Districts to issue bonds for the exclusive use of public free schools within any such Special Tax School Districts, whenever a majority of the qualified electors thereof who are free-holders shall vote in favor of the issuance of such bonds."

The Legislature immediately following the adoption of the above constitutional provision enacted Chapter 6542, Laws of 1913, Section 15 of which was subsequently amended by Chapter 6967, Laws of 1915, in which is found the answer to your inquiry. The second paragraph of said Section 15, among other things, provides as follows:

"The County Board of Public Instruction shall have

power at all times to invest the Sinking Fund collected for the retirement of any bonds of any district in the bonds of another Special School Tax District of the same County; Provided, said bonds shall be purchased at par, and the Board shall have further right to invest the Sinking Fund of any district in any municipal or county bonds of the county under its jurisdiction, provided that the said bonds shall be of such date and maturity that they will mature on or before the date of the maturity of the district's bonds, with whose Sinking Fund they have been purchased. * * * Provided always, that the Board shall have the right to keep the Sinking Fund on deposit earning the rate of interest agreed upon until such time as in their judgment they may be able to invest it in bonds to better advantage as herein provided for."

Based on the above, it is my opinion that the laws of this State do not authorize a County Board of Public Instruction to borrow the Sinking Fund of any Special Tax School District to be used in another District. In fact such fund can be used for no purpose except that specifically stated.

I return herewith the enclosures mentioned.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General

COUNTY SCHOOL SUPERINTENDENT—AUTHORITY OF SCHOOL BOARD TO INCREASE SALARY IN WAY TO BE EFFECTIVE FROM JANUARY FIRST.

Tallahassee, Fla., May 16, 1918.

*Hon. W. N. Sheats, State Superintendent,
Capitol.*

Dear Sir:

Your request for official opinion received involving the following question:

Can a County Board of Public Instruction now (May 10, 1918), increase the monthly salary of a County Superintendent for the months of January, February, March and April, 1916?

Replying will state that Section 347 (11th Par.) General Statutes authorizes each Board of Public Instruction "To fix the compensation for the services of the County Superintendent of Public Instruction;" and Chapter 5658, Laws of 1907, fixes the *minimum* salary of a County Superintendent basing it upon the total annual receipts of the County for School purposes.

The respective County Boards seem to be clothed with a wide discretion in fixing the *maximum* amount of salaries for Superintendents, and nothing appears in our search of the laws of this State which would prohibit them fixing or increasing such salary for three or four months passed.

It is, therefore, my opinion that the County Board would have power so far as the law is concerned to increase the compensation of the County Superintendent to become effective from or prior to the date of the action of the Board. This policy may not be altogether commendable, however, in view of the fact that the scholastic

year does not begin until July 1, 1918, for which year the budget of the Board of Public Instructions is required to be prepared and filed with the County Commissioners in the month of June preceeding.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

STATE BOARD OF EXAMINERS—NO AUTHORITY
TO PAY EXTRA ASSISTANTS IN CONDUCTING
EXAMINATIONS.

Tallahassee, Fla., November 29, 1918.

*Hon. W. N. Sheats, State Superintendent,
Capitol.*

Dear Sir:

Your letter of the 22nd instant duly received in which you requested an official opinion as to the payment of certain expenses incurred by the State Board of Examiners described in your communication.

I note from the bills attached to your letter that one is for \$108.75 rendered by various persons who assisted in conducting the Summer School Examinations at Tallahassee and Gainesville; another for \$55.20 for assistance in conducting examinations at other points in the State; and another for \$189.42 for the payment of persons for grading examination papers.

Replying to the above will state that the provisions of law providing for the conducting of examinations, and for the grading of papers, together with appropriations made for that department, is contained in Sections 20, 24 and 25 of Chapter 7372, Laws of Florida, 1917.

It is observed that Section 20 provides that it shall be the duty of the said Board to personally conduct all teachers' examinations, orally or written, under such rules and regulations as the State Board of Examiners may suggest, and as shall be approved by the State Board of Education. Also, it provides that it shall be their duty "to grade all examinations, orally and written, except as may be provided by the State Board of Education."

While it is true that the State Board of Education may provide some regulation relative to grading examination papers, yet there does not seem to be any appropriation made in the law for paying for the grading of such papers.

Section 24 provides only for the "salary and traveling expenses" of the respective members of the Board, and Section 25 merely appropriates the sum of Four Thousand Dollars annually, or so much thereof as may be necessary to pay the "salaries and traveling expenses" of the State Board of Examiners in case the funds provided for in Section 24 shall be found insufficient.

Section 4 of Article IX of our Constitution provides that "No money shall be drawn from the Treasurer except in pursuance of appropriations made by law."

There is a well-fixed principle of law that all laws making appropriations of public money shall be strictly construed, and in view of the fact that the Act referred to makes no appropriation for the payment of persons to assist in conducting examinations, nor for the grading of papers, it is my opinion that the bills referred to cannot legally be paid from the funds appropriated under said Chapter 7372.

I herewith return bills mentioned above.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

Opinions to the State Chemist.

FOOD AND DRUG INSPECTORS—WHEN EXPENSE
ACCOUNT SHOULD BE APPROVED BY STATE
CHEMIST AND COMMISSIONER OF AGRICUL-
TURE.

Tallahassee, Fla., December 7, 1917.

*Hon. R. E. Rose, State Chemist,
Tallahassee, Florida.*

My dear Sir:

I have your communication relative to the duties and powers of the Commissioner of Agriculture and the State Chemist in the matter of administering the pure food and drugs law of this State, and in reply beg to advise that the answer to your inquiry involves a construction of Chapter 5452, Acts of 1905, as amended by Chapter 5661, Acts of 1907, and Chapter 6122, Acts of 1911, as amended by Chapter 6541, Acts of 1913.

Chapter 5452, Acts of 1905, as amended by Chapter 5661, Acts of 1907, relates to commercial feeding stuffs alone, and to that extent places the State Chemist under the direction and supervision of the Commissioner of Agriculture, and further authorizes the Commissioner of Agriculture, as provided in Section 15 thereof, to prescribe such rules and regulations not inconsistent with the said Act as he may deem necessary for the inspection, analysis and sale of commercial feeding stuffs in this State.

Chapter 6122, Acts of 1911, as amended by Chapter 6541, Acts of 1913, is better known as the pure food and drugs law, and, as a general proposition, in my opinion, imposes a joint duty and responsibility on the Commissioner of Agriculture and the State Chemist in the matter of administering this Act. In support of this view your attention is directed to the following provisions of the law:

Section 2. "That the inspection, examination, or chemical analysis of specimens of foods and drugs shall be made by the State Chemist of Florida, or under his direction and supervision, *for the purpose of determining whether such articles are adulterated or misbranded* within the meaning of this Act. * * *."

Section 9, Paragraph 2. "Said food, drug and fertilizer inspectors of the chemical division of the Department of Agriculture shall have authority and it shall be their duty under instructions from the Commissioner of Agriculture and the State Chemist to inspect foods and drugs and commercial stock food and commercial fertilizers and other material subject to inspection as now provided by law * * *."

Section 12. "That for analysis of foods and drugs shall be taken by the duly qualified and sworn inspectors, or chemist, who shall take samples of such articles as may be directed by the State Chemist, and in the manner prescribed by law."

Section 13. "That it shall be the duty of Commissioner of Agriculture and the State Chemist to fix standards of purity for food products where the same are not fixed by this Act in accordance with those promulgated by the Secretary of Agriculture of the United States * * *."

Section 14. "That the State Chemist shall make an annual report to the Governor on work done in execution of this Act, which report may be included in that now made on commercial fertilizers and published therewith * * *."

Section 15. "That the Commissioner of Agriculture with the advice of the State Chemist shall establish such rules and regulations as shall not be inconsistent with the provisions of this Act."

There appears to be no departure from the rule as above defined except in the matter of taking samples for the purpose of making chemical analysis to determine whether such foods or drugs have been adulterated or misbranded,

which is required to be done under direction of the State Chemist. In support of this view your attention is directed to the provisions of Sections 2 and 12 above quoted.

Paragraph 6 of Section 9 of the law as above referred to requires that all bills for samples drawn and transmitted to the State Chemist and for the salary and traveling expenses of all pure food and drug inspectors *shall be paid* on detailed vouchers *approved* by the Commissioner of Agriculture, but since Section 2 provides that the inspection, examination or chemical analysis of specimens of food and drugs shall be made by the State Chemist, or under his direction and supervision, and Section 12 provides that the inspectors shall take samples of such articles of foods and drugs as may be directed by the State Chemist, it is my opinion that bills for traveling expenses of food and drug inspectors, and for samples drawn by such inspectors, should be approved by the State Chemist, and by him presented to the Commissioner of Agriculture for his approval.

Respectfully submitted,

VAN C. SWEARINGEN,
Attorney General.

COMMERCIAL FERTILIZERS—NO AUTHORITY TO
REFUSE TO REGISTER FOR SALE BY REASON
OF PRICE.

Tallahassee, Fla., February 21, 1918.

*Hon. R. E. Rose, State Chemist,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your favor of the 19th instant, which reads as follows:

"I understand that the Fertile Company of Cleveland, Ohio, have demanded the registration of their goods by

the Commissioner of Agriculture, which have previously been cancelled for the reason that it was an impossibility upon its face and also a case of unscrupulous 'profiteering' on the part of the manufacturers. Analysis, as shown in the accompanying circular, shows that their goods do not contain the amount of valuable plant food as stated in their sworn guaranteed analysis, which of itself is a sufficient cause for refusing to register these goods.

"There is nothing peculiar in this formula, excepting the very large amount of inert material, to-wit: Water. The permission to allow these goods to be sold in the State of Florida in competition with legitimate goods made by legitimate manufacturers, of which the State has a number, is not only unfair to the honest manufacturer, but is peculiarly unfair to the user of commercial fertilizers, who can purchase the same goods, less water, for more than a thousand per cent. less from reputable fertilizer manufacturers.

"The object of the registration under oath with the Commissioner of Agriculture, and the acceptance by him, carries with it the right to refuse to accept any formula which in his opinion should not be accepted, particularly when on investigation any analysis it is found that the goods do not compare with the analysis.

"This is a very similar case to that of the New Mineral Fertilizer Company who attempted to register their goods, and sell utterly worthless material, containing no available plant food, in the State of Florida at \$20 per ton; while these people are selling their goods for \$330 per ton plus freight. The actual plant food in these goods could be purchased in Florida, at the date of the registra-
tra for \$33.50 per ton.

"Therefore, in the name of the legitimate fertilizer manufacturers of the State, and the consumers of fertilizer, I, as State Chemist of Florida, protest against the admission of this material, containing some 70 per cent

of water, sold at the rate of \$330 per ton plus freight to the people of our State."

Replying to the above, I beg to quote you an opinion which I rendered Hon. W. A. McRae under date of the 15th instant on this subject, and which sets forth fully my position in this matter:

"Your communication of the 6th instant duly received requesting an opinion as to whether or not you are authorized under the Florida Commercial Fertilizer Statutes to decline to register the products of the Fertile Chemical Company, of Cleveland, Ohio, under the facts stated.

"A careful reading of our Statutes, the State Chemist's letter to you under date of November 1, 1917, and the brief of Hon. F. T. Myers, together with your communication, discloses that the only legal point involved is whether or not you could under this law refuse the registration of the Nitro-Fertile brand of liquid fertilizer *upon the ground that the same is considered very exorbitant in price*, as compared with that of other commercial fertilizers containing similar or like ingredients.

"Reply to the above, will advise that in my opinion if we give every expression in the Statutes regulating the registration of commercial fertilizers for sale and distribution in this State its full meaning it clearly fails to show that the price charged for the commercial fertilizer is one of the matters required to be stated in the application for registration, it is not, therefore, a prerequisite to registration, and there is no room for interpretation or construction. I do not understand that the law would give you such authority to so refuse even by implication.

"The general rule for interpretation of directory statutes is stated by our Supreme Court in the case of *Palmer v. Parker*, 52 Fla. 389, 42 So. 396, as follows: 'The first rule of construction is that, if the language is clear and admits of but one meaning, the Legislature should be held

to have intended what it has plainly expressed, and there is no room for construction.'

"The well known authority of Lewis' Southerland Statutory Construction, Vol. 2, Sec. 627, lays down the following principle: 'When a Statute is passed authorizing a proceeding which was not allowed by the general law before, and directing the mode in which an act shall be done, the mode pointed out must be strictly pursued, it is the condition on which alone a party can entitle himself to the benefit of the Statute, and its directions should be strictly complied with.'

"It perhaps will be conceded that the main purpose of the registration in your office of all commercial fertilizers for sale in this State is to put the purchasers on notice not only as to what ingredients they are buying but to furnish the purchasers an easy recourse for damages in the event the ingredients do not measure up to the official registration.

"It is, therefore, my opinion that you are not clothed with power to refuse to register commercial fertilizers of corporations or persons who have complied with the letter of the law. However, if you are still of the opinion that you have properly construed this law, the point could be definitely and finally determined by mandamus proceedings."

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

Opinions to State Tax Commission.

TAXATION—EXEMPTIONS ALLOWED SHOULD BE
TAKEN AFTER ASSESSED VALUATION IS
FIRST ASCERTAINED.

Tallahassee, Fla., January 29, 1917.

*The Tax Commission,
Tallahassee, Florida.*

Gentlemen:

Replying to your verbal inquiry of this date, I beg to say that in my opinion the exemption allowed under Section 9, of Article IX, of the Constitution of this State to every widow that has a family dependent upon her for support and every person who is a bona fide resident of this State and has lost a limb or been disabled in war or by misfortune, should be allowed and taken from the assessed value of the property of such person.

Thus construed the matter would be handled in this way: find first the value for the purposes of taxation of the property of such person or persons and subtract from this value the amount of the exemption allowed under this constitutional provision.

Respectfully submitted,

T. F. WEST,
Attorney General.

TAX COMMISSION—AUTHORITY OF TAX COMMISSION TO EQUALIZE ASSESSMENTS UNDER THE CONSTITUTION.

Tallahassee, Fla., March 24, 1917.

*The Tax Commission,
Tallahassee, Florida.*

Gentlemen:

Yours of the 16th instant has been received.

I note your inquiry as follows:

"There seems to be some doubt in the minds of certain members of the legislature, as well as several prominent citizens of the state, that the legislature has no authority to clothe the Tax Commission with adequate powers to equalize tax assessments in the state, and as the members of the Tax Commission believe that the legislature has such authority, we will thank you for your opinion in the matter.

"We believe that Section 1 of Article IX of the Constitution, and also Section 1 of Article V as amended in 1914, gives the Legislature all needed authority in the premises."

The answer to this inquiry goes back to the elementary proposition that the State Constitution is a limitation upon the power of the Legislature and not a grant of power, and it is settled law in this State that "no duly enacted statute should be judicially declared to be inoperative on the ground that it violates organic law unless it clearly appears beyond all reasonable doubt that under any rational view that may be taken of the statute it is in positive conflict with some identified or designated provision of constitutional law."

City of Jacksonville v. Bowden, 67 Fla. 181.

The Supreme Court, in the case of *Cotton v. County Commissioners of Leon County*, 6 Fla. 610, said:

"In proceeding to define and determine the constitutional power of the legislature department, it is proper to note the characteristic difference which marks our Federal and State Constitutions. Whilst the former contains only specific grants of powers, the later makes a general grant of all the political power of the people, restrained only by specific reservations."

And in the case of *Chapman v. Reddick*, 41 Fla. 120, the court said:

"Our State Constitution is a limitation upon the power; and unless legislation duly passed be clearly contrary to some express or implied prohibition contained therein, the courts have no authority to pronounce it invalid."

There is, in my opinion, nothing in the State Constitution which forbids it, and, therefore, I would say that the legislature of this State has the power to confer upon the Tax Commission authority to supervise and revise assessments of property for the purposes of taxation, to the end that the "uniform and equal rate of taxation" contemplated by the Constitution may be more nearly secured.

As long as the system now obtaining in this State continues, valuations of property for the purposes of taxation are not wholly of local concern, because the revenue coming to the State for the maintenance of the State Government is produced by a levy by the legislature of a prescribed millage which is uniform throughout the State, and so long as there are material differences in the valuations of similiar properties in the various counties of the State, tax burdens will not, therefore, be equally distributed.

It will, of course, be understood that I am not undertaking to decide for the legislature what power it has in dealing with this question, because the legislature is itself primarily the judge of its own powers, and it will

also be understood that this letter represents simply my views as an attorney after a hurried consideration of the subject.

Respectfully submitted,

T. F. WEST,
Attorney General.

TAXATION—METHOD OF ASSESSMENT OF BUILD-
ING AND LOAN ASSOCIATION.

Tallahassee, Fla., June 8, 1917.

*The Tax Commission,
City.*

Gentlemen :

Replying to your request for an expression from this office relative to the basis of assessments for the purpose of taxation of the properties of building and loan associations, I beg to say that in my opinion the properties of such associations should be assessed in the same manner and upon the same basis as the properties of other owners are assessed in this State.

The properties owned by such associations, as I understand, which are taxable and usually lots and buildings, cash on hand, and notes and mortgages in which the funds of such associations are invested.

Respectfully submitted,

T. F. WEST,
Attorney General.

TAXATION—COUNTY COMMISSIONERS' AUTHORITY TO CHANGE VALUATIONS AFTER AUGUST MEETING.

Tallahassee, Fla., July 31, 1917.

*The Tax Commission,
Tallahassee, Florida.*

Gentlemen :

Yours of the 25th instant has been received.

I note your inquiry as follows:

"We attach hereto a message from the County Commissioners of Alachua County in reference to whether or not they can legally change their valuations. We contend, and so told them, that they had a right to raise or lower their valuations for the purpose of equalization at any time prior to the day of August 6th, the day they advertised to hear complaints.

"Please give us your opinion on this matter."

Replying to this inquiry, I will say that if the Board of County Commissioners of Alachua County has met as a board of review and equalization under the provisions of Section 23 of Chapter 5596, Laws of Florida, and adjourned sine die as such board, it would not, under authority of the case of Sparkman, Tax Assessor, v. State ex rel Bank of Ybor City, 71 Fla. 210, be authorized to reconvene and make changes in valuations of properties on the assessment rolls of the county.

If, however, the board has recessed only and has not finally disposed of the matter and adjourned, it would be authorized, I think, to consider such questions as may be presented to it as a board of review and equalization.

The question of whether or not the Tax Commission of this State has the power to require the Board of County Commissioners to reconvene and reconsider questions

presented to it as a board of review and equalization after it has adjourned, could, I think, be tested by mandamus proceeding.

Respectfully submitted,
T. F. WEST,
Attorney General.

TAXATION—WHAT LANDS OF RAILWAY COMPANIES SHOULD BE RETURNED TO COUNTY ASSESSOR.

Tallahassee, Fla., March 28, 1918.

*Hon. J. V. Burke, State Tax Commissioner,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 25th instant enclosing communication from Hon. R. L. Hill, Tax Assessor, Dade County, with reference to certain real estate owned by the Florida East Coast Railway Company, which property Mr. Hill alleges is in no way used by the said Railway Company, and is, in his opinion, held only for speculative purposes. I understand that Mr. Hill desires to know whether he, as Tax Assessor, should assess said property as other real estate, or whether this property is subject to assessment by the State Railroad Assessment Board.

Replying to this inquiry, I beg to advise that Section 46, of Chapter 5596, Laws of Florida, Acts of 1907, sets out the property which should be returned by the Railroad Company, through its proper officers, to the Comptroller for taxation; that the provisions of Section 49, of the above law, provides that the Railroad Company, through its proper officers, shall file with the Tax

Assessor a full and complete list of all lands or lots owned or held by them the same as the property of individuals.

By reading the provisions of Section 46, above mentioned, it will be noted that a return is required to be made to the Comptroller of all "lots or parts of lots not leased or rented," and by the provisions of Section 49 a return is required to be made to the County Assessor of Taxes of all lands or lots owned or held by any railroad company the same as property of individuals.

From the statements made by Mr. Hill, it would appear that the lands which he mentioned are such lands as are contemplated to be returned to the County Tax Assessor.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

PLATS—NO LAW REQUIRES PLATS OF FARM
LANDS TO BE RECORDED.

Tallahassee, Fla., May 7, 1918.

*Honorable Tax Commission,
Tallahassee, Florida.*

Gentlemen:

I am in receipt of your communication of the 6th instant as follows:

"Enclosed herewith please find letter from Mr. John V. McCormick, Chicago, relative to ownership of property at Dinsmore in Duval County, Florida.

"Kindly advise whether or not there is any law requiring the plats of subdivisions, such as Dinsmore

Farms, to be placed of record in the county in which they may be located."

Replying to the above inquiry, I beg to advise that there appears to be no statute providing for the recording of plats of subdivisions as mentioned by you.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

TAXATION—ASSESSMENT OF LEASES USED FOR
SHIP-BUILDING PURPOSES.

Tallahassee, Fla., May 7, 1918.

*Honorable Tax Commission,
Tallahassee, Florida.*

Gentlemen:

I am in receipt of your communication as follows:

"The Hillyer-Sperring-Dunn Company operating under a lease for certain properties leased by them from the South Jacksonville Improvement Company, in South Jacksonville, Florida, erected a ship-building plant thereon. By the terms of the lease all improvements placed thereon by the lessee were to be removed at the expiration of the lease. Later, the United States Shipping Board Emergency Fleet Corporation commanded this property and it is now being used by that Board, though the Hillyer-Sperring-Dunn Company are, of course, receiving rentals from the Government for use of the same.

"Please advise whether or not the Tax Assessor of Duval County should assess these improvements against the Hillyer-Sperring-Dunn Company, lessees, or the South Jacksonville Improvement Company, the lessor; and if

there is a law controlling such assessments whereby taxes so levied might be collected."

Replying to the above inquiry, I beg to advise that I am herewith enclosing you a copy of a letter addressed to Hon. L. H. Hitchcock, Tax Assessor, Jacksonville, Florida, which covers the subject matter of your inquiry.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

TAXATION—LEGAL CITIES FOR ASSESSMENT OF STEAMSHIPS.

Tallahassee, Fla., May 7, 1918.

*Honorable Tax Commission,
Tallahassee, Florida.*

Gentlemen:

I am in receipt of your communication of the 6th instant as follows:

"We beg to inclose herewith correspondence relative to the assessment of certain property belonging to the Clyde Steamship Co., a corporation, as we are advised, under the laws of the State of Maine.

"The Clyde St. Johns River Line consists of two steamers, the "City of Jacksonville" and "Osceola." The "City of Jacksonville," so we are advised, has not been out of Florida waters in something like 20 years. The "Osceola" was built at Jacksonville, Fla., a number of years ago, and has never been beyond the waters of the St. Johns River; these steamers ply the waters of the St. Johns River between Jacksonville and Sanford, and it would seem that as they are not engaged in coastwise trade

but operate on the waters of the State of Florida they should be taxable at their home port, Jacksonville.

"Kindly advise whether or not the Assessor of Taxes of Duval County should place them on the tax rolls for taxation, and whether or not the State should have authority to enforce the collection of taxes assessed thereon."

Replying to the above communication, I beg to advise that Section 3 of Chapter 5596, Laws of Florida, Acts of 1915, provides in part as follows:

"Sec. 3. The terms personal property and personal estate, as used in this chapter, shall have the same meaning and shall, for the purpose of taxation, be construed to include all goods and chattels, moneys and effects, all boats and vessels," etc.

In the case of *Hunt v. Turner*, 54 Fla. 654, 45 So. 509, our Supreme Court said that as a general rule if a person is domiciled in the State his personal property in the contemplation of law has its situs in that State and is taxable there. However, there are some exceptions to this general rule. "For instance, where the investment of the funds of a non-resident is controlled by an agent of the owner and loaned and reloaned by him to citizens of the State where he keeps the funds, the notes and securities taken and held by the agent in his possession and under his control, these notes and securities have a business situs where they are kept which render them there subject to taxation."

From your inquiry, I understand that the Clyde Steamship Company maintains an office in Jacksonville, Florida, and has a line of steamers that ply the St. Johns River in this State,—known as the Clyde-St. Johns River Line, and that there are two steamers used in connection with the business of this Company on the St. Johns River.

In view of the statute above quoted in which it is set out that boats and vessels are personal property, and

the opinion of our Supreme Court above mentioned, it is my opinion that the personal property mentioned in your communication comes within the exception above mentioned, and has a business situs in the County of Duval, and would, therefore, be taxable under the laws of this State.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

TAXATION—NO AUTHORITY TO ASSESS GENERAL BANK DEPOSITS AGAINST BANKS IN THIS STATE.

Tallahassee, Fla., June 11, 1918.

*Hon. John Neal,
 Hon. J. R. Paterson,
 Hon. J. V. Burke,
 State Tax Commissioners,
 Capitol.*

Gentlemen:

Your letter of the 27th ult. requesting advice as to whether or not deposits in banks should be returned as property of banks for taxation and assessed by the Assessor received, as follows:

"Sections 12 to 18, inclusive, Chapter 5596, Laws of Florida, cover instructions and requirements of the duties of County Assessors in making assessments. They are required to see that all property is returned for assessment at its 'true cash value,' etc.

"The statement made by the banking institutions of the State show a very large amount of money on deposit

held by them. Our Supreme Court in the case of Collins vs. State, 33rd Florida, page 429, and Camp et al. vs. First National Bank of Ocala, 44th Florida, page 498, has held that when a deposit is made in a banking institution the title passes immediately, and the bank is the owner of the money, the depositor becoming a creditor to the extent of the deposit made.

"Under these decisions, please advise if the Assessor should not, in the performance of his duty as laid down in Chapter 5596, assess to the banks the money owned by them—as per their sworn statements—for taxation the same as other property is assessed."

Your communication calls attention to Section 12 of Chapter 5596, which makes it the duty of Tax Assessors to ascertain the names of all taxable persons and all their taxable property as of January 1 of each year; also to Section 18 of the same Act, which makes it the duty of the Assessor to fix values on all personal estate liable to taxation where the same is not duly returned for taxation by owners or their agents under oath.

In addition to those mentioned by you, we have other provisions in the same Chapter which appear also to have reference to the subject in hand: Section 8 of said Chapter, provides for taxing the shares of bank stock, and Section 9 provides as follows:

"Any banking, loan or trust company or corporation or any person acting as the agent of another, and having in his possession or under his control, or management, any money, notes, credits or personal property belonging to such other person, with a view to investing or loaning or in any other manner using the same for pecuniary profits, shall be required to return the same for assessment at the real value, and such company, corporation, or person, shall be liable for the tax on the same; and if such company, corporation or person refuse to list such property on a return for assessment or to swear to the same, the amount of such money, notes, mortgages

or credits shall be listed and valued according to the best knowledge of the Assessor."

It will be observed that Section 9 covers money in possession of a bank as "agent" to be invested or loaned for pecuniary profit when the same is placed with the bank for some special purpose,—for instance as a collecting agent, or to make a special investment or loan,—the bank in such cases becoming the bailee, trustee, or "agent" for the depositor and not the "owner or "debtor."

Bearing the above in mind, we now refer to the cases of *Collins v. State*, 33 Fla. 429, and *Camp, et al. v. First National Bank of Ocala*, 44 Fla. 497, which you cite in your communication. In these cases it is found our Supreme Court has defined the relation of a banker and depositor by stating that a deposit of money in a bank "transfers the ownership of the money to the bank, and the relationship with reference thereto, as between the bank and the depositor, is simply that of *debtor* and *creditor* at common law. The original and every general deposit is, in strict legal effect, a *loan* by the customer to the bank."

The above decisions are in line with all text books as well as all leading cases upon the subject. For example, a leading authority—Volume 2, *Morse on Banks and Banking*, Section 568—states the law of the United States and England as follows:

"The simple deposit of money on account is a general deposit, and transfers the ownership of the money to the bank. The ordinary relation existing between a bank and its customer, if not complicated by any further transaction than that of the depositing and withdrawing of moneys by the customer from time to time, is simply that of debtor and creditor at common law. The original and every subsequent deposit by the customer is in strict legal effect a loan by the customer to the bank. Efforts have been made to hold banks to the duties and responsibilities of trustees in respect to the sums placed on

deposit with them, also to hold them as agents of the depositor, but these have uniformly failed both in England and in the United States; and the general doctrine as laid down above is sustained by a great weight of authority."

It is again noted that Section 9, of said Chapter 5596, only makes the bank liable for return for taxes moneys in possession where the bank acts as "agent" for a depositor.

It is well established that under the provisions of Section 9784, U. S. Compiled Statutes, 1916 (R. S. Sec. 5219), the State is not clothed with power to assess the capital stock of a National Bank as property of and against the bank, but the shares are legally assessable as the property of the share-holders only; also that deposits in National Banks are not assessable as against the bank, but it is not prohibited as against a depositor. *State v. Clement National Bank*, 78 Atl. 944, 84 Vt. 167, Ann. Cas. 1912-D 22, decided in 1911. The Act of Congress, which authorized the assessment of a tax on deposits, was repealed by the Act of March 3, 1883, Chapter 121, Section 1.

Again, if such assessment is prohibited by law as to National Bank deposits, it would in effect be a discrimination against State Banks (admitting that our tax laws authorize a taxing of deposits against banks) to assess their deposits as property of the banks; also to require it of State and not of National Banks would in effect be a violation of Article IX, Section 1, Florida Constitution, which provides for "a uniform and equal rate of taxation" on all property in the State.

There is no provision in the Federal Law depriving the State of the power to tax the deposits in National Banks to *depositors*; neither do we find that there is any statute in this State authorizing the taxing of deposits in State Banks to any one except the depositor—except, of course, where the bank acts as "agent" for the

depositor. The rule in this State is that laws imposing taxes must be construed strictly (this applying especially to ad valorem taxes) therefore, we arrive at the conclusion that if the Legislature had intended that deposits in banks should be returned and taxed as personal property of the banks the law would have so stated in specific terms, the word "deposits" being of far more general use in law and common parlance than any other word or term of similar import or meaning.

The conclusions reached above are in effect supported by a former opinion of Attorney-General Thomas F. West to Hon. W. V. Knott, Comptroller, as shown by the report of the Attorney General of 1913-14, page 95, wherein he held as follows:

"It should be borne in mind that property, not responsibility, is taxable, and therefore, a bank should not be required to pay taxes upon deposits held by it since such deposits are subject to check by the owners thereof and are necessarily transient. This view is emphasized by the Statutory provision requiring the owners of such deposits to return them for taxation. This rule, however, should not be confused with the provision requiring persons acting as agents and having in their possession or control moneys or credits with a view of investing or loaning such moneys or credits for the owner, to make return thereof for taxation."

Based upon what has been pointed out, it is my opinion that general deposits in banks of this State are not taxable as such against the banks.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

TAXATION—PROPERTY OF WIFE SHOULD ORDINARILY BE ASSESSED IN NAME OF HUSBAND.

Tallahassee, Fla., June 11, 1918.

*Hon. Tax Commission,
Capitol.*

Gentlemen:

I am in receipt of your communication of June 6 enclosing letter from Mr. L. G. Hitchcock, Assessor of Taxes, Duval County, with reference to the question of the assessment of property which is supposed to belong to the wife of a married man, and also such property as may be supposed to belong to minor members of the family.

Replying to your communication, I beg to advise that the statute is not specific upon the questions involved in this communication, but I take it that the safest course to pursue would be to assess such property against the husband, or father as the case may be, for taxation.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

TAXATION—AUTHORITY TO TAX FRANCHISES.

Tallahassee, Fla., July 13, 1918.

*State Tax Commission,
Tallahassee, Fla.*

Gentlemen:

Your communication of the 6th instant duly received, which reads as follows:

"At the meeting of the State Tax Assessors in the City of Jacksonville on December 18-19, 1917, the ques-

tion of taxing franchises was under discussion, and we quote from the minutes of the meeting:

"Mr. Hall (Brevard): As to the legality of assessing a franchise, of course I am not a lawyer, but I looked over that just as carefully as I could in my own way, and I cannot find anything in the law that says you cannot assess a franchise, the courts have held time and again that a franchise is personal property—and the statutes of Florida themselves say that you can sell a franchise for taxation, and if you can sell it for taxes you can tax it. I went to the Attorney of the Board and asked him for an opinion, told him what I have just said and he says, 'You are right.'"

"Mr. Secretary read as information the written opinion from the Attorney of the Board of County Commissioners of Brevard County."

"Mr. Bryan (Broward): I suggest that the Secretary write the Attorney General and if he agrees with the County Attorney for Brevard County that we assess franchises."

"Mr. Chairman: I would suggest that if you will pass a resolution requesting the Tax Commission to take this matter up with the Attorney General and instruct us whether we can tax these franchises it will simplify matters."

"Mr. Kirk (Hernando): I move that we pass on the suggestion of the Chairman."

"Seconded—Carried."

"Complying with the above request we ask that you kindly state whether or not under Article 9 of the Constitution and Sections 9-16-17-18-20 and 46 of Chapter 5596, the Assessors of the State would be justified in adding the value of a franchise to that of any property that was operated under a franchise granted by this or other State of the Union; that is, should they take the franchise in consideration in reaching or arriving at the true value of a property so assessed?"

After an examination of the constitutional and statutory provisions referred to in the above communication, the conclusion is reached that the Legislature has not, in expressed terms authorized the assessing of franchises or taking into consideration the value of a franchise in assessing property in this State. It is a matter of record that at nearly every session of the Legislature bills having for their purpose the taxing of franchises have been introduced, but none has been enacted into law. The nearest provision that could be said to authorize a franchise tax is found in Section 43, of Chapter 6421, Laws of 1913, which requires railroads to pay annually to the State Comptroller a sum equal to Ten (\$10.00) Dollars per mile for each mile of its railroad track in this State, and Section 54 of the same Act which requires all telegraph lines to pay Sixty-five Cents per mile for each mile of telegraph line operated in this State, and that telephone companies pay a tax of Ten to Six Cents on each 'phone operated.

I think you will find that several states of the Union levy and collect a franchise tax, or that the value of the franchise owned is required to be considered in arriving at the valuation of property, but in each case so far as I have been able to determine from an examination of those laws, the matter is specifically provided for either in the constitution or statute of those states.

It is my opinion, therefore, that while the assessor would probably have the authority to take into consideration the value of a franchise, where it can be arrived at, when assessing the other property of a company or corporation owning a franchise, yet there is no statute in this State authorizing the taxing of a franchise as such or requiring the value of a franchise to be taken into consideration. My conclusions are based upon the following circumstances and facts:

- (1) Repeated attempts to pass a franchise tax law has failed, which would lead to the undoubted conclusion

that the Legislature has recognized that none existed as the law stands.

(2) Through the several years since the enactment of the present revenue law, no tax of that kind has been levied by the respective County Assessors of Taxes, or by the State Comptroller, and this with the full knowledge of each subsequent legislature.

(3) Tax laws are required to be construed strictly, and our present statutes make no mention of levying a tax on the value of franchises, though the word "franchise" is a distinguishing word both in common parlance as well as in law.

While it is true that the last sentence of Section 46, of Chapter 5596, Laws of 1907, refers to the fact that if any telegraph line in this State fails to pay the taxes assessed, the said lines and all of its properties, "rights and franchises," or any property belonging to the said company, or person, may be sold in the same manner as is provided for the sale of the railroads, or any of its property upon which any tax shall be due and not paid; yet this statute would not of itself authorize the "levying" of a franchise tax,—if so, it would only have reference to telegraph lines, and possibly railroads.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

Opinions to the State Auditor.

**TAXATION—TAXES VOLUNTARILY, THOUGH ER-
RONEOUSLY PAID, CANNOT BE REFUNDED
AFTER RECORD MADE.**

Tallahassee, Fla., December 18, 1917.

*Hon. J. Will Yon, State Auditor,
Tallahassee, Fla.*

Dear Sir:

Replying to your verbal inquiry of the 17th instant, I beg to advise that under the laws of this State all property, both real and personal, is subject to taxation as of January 1 of each year. In this connection I beg to call your attention to Section 510 of the Compiled Laws of 1914 (Chapter 5596, Acts of 1907, Section 12).

With reference to the question of how a person who has paid taxes on property not subject to taxation may get a refund of such taxes, I beg to advise that I know of no law providing for a refund in such a case.

Our Supreme Court in the case of *Johnson v. Atkins*, 44 Fla. 105, said that "taxes voluntarily paid cannot be recovered from the Collector, although he has not turned the money over to the State."

Of course, it is possible that a party who has paid taxes upon property which was not subject to taxation at the time of the assessment might be able to get relief through the Legislature in the form of a relief bill.

VAN C. SWEARINGEN,
Attorney General.

COUNTY TREASURER—LIABILITY TO COUNTY
FOR AMOUNT OF VOID CHECKS ACCEPTED AS
CASH FROM TAX COLLECTOR.

Tallahassee, Fla., July 25, 1918.

*Hon. J. Will Yon, State Auditor,
Capitol.*

Dear Sir:

Your letter of the 20th instant, requesting an official opinion, was duly received as follows:

"In my recent audit of the accounts of the County Treasurer of Hillsborough County, Hon. J. C. White, I found said accounts out of balance \$214.00, which came about in the following manner: Included in the debits of the County Treasurer, which he should have turned over to the County on January 2, 1917, when he went out of office, was a check of J. L. Branch for \$214.00, which check had been returned to J. C. White, County Treasurer, 'Account of insufficient funds.'

"The County Treasurer had accepted this check from J. L. Branch in payment for funds of the County from J. L. Branch, Tax Collector, to J. C. White, County Treasurer, and the County Treasurer had issued the usual official receipt to J. L. Branch to cover this amount, and the County Treasurer had deposited the check in the usual manner for collection, which check came back from the bank unpaid account of insufficient funds.

"Please advise whether or not J. C. White, the former County Treasurer of Hillsborough County, is liable for the amount of this check of \$214.00, and whether or not he should make it good and pay to the County the amount of \$214.00 to balance his account."

Replying to the above will advise that the record of the check in question, as presented by your communica-

tion, would appear to make Mr. White legally liable to the County for the amount stated. The law assumes that the Treasurer will accept money only, and if he accepts a check without satisfying himself that it will be paid, and issues his receipt therefor, the liability would seem to rest upon him. It might be said, however, that circumstances might arise in exceptional cases which would relieve the County Treasurer of legal liability which could properly be tested in the courts, but this question, of course, is not before me for adjudication.

Therefore my opinion is that so far as the State Auditor is concerned, and as between the County and the Treasurer the liability for the \$214.00 attaches to the former County Treasurer who has his legal recourse as against the Bank or the Collector as the case may be, but you, under the law, would be required to look to the former County Treasurer for the same.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

COUNTY COMMISSIONERS—WHEN NOT AUTHORIZED TO PAY THEMSELVES MILEAGE FOR INSPECTION OF PUBLIC ROADS.

Tallahassee, Fla., August 16, 1917.

*Honorable J. Will Yon, State Auditor,
Capitol.*

My dear Sir:

Your request of the 16th instant for opinion received as follows:

"I will thank you to give me your opinion on Section 775 of the General Statutes of Florida as amended by

Chapter 6240 of the Acts of 1911, relating to the compensation of County Commissioners.

Is the payment of mileage to County Commissioners for public road inspection authorized? If mileage is not authorized, how shall said Commissioners be compensated for such work?"

Replying to the above will advise that the act referred to above does not authorize the payment to County Commissioners of a mileage traveled in inspecting public roads and bridges. The only compensation specified for inspecting roads and bridges is the per diem authorized by said act.

We have another law, Chapter 7330, Acts of 1917, which authorizes the payment to County Commissioners of mileage actually traveled in inspection of public roads and bridges or in performance of any other service required of them. However, this act is only applicable to County Commissioners in counties having a population of "from thirty-seven thousand up to forty thousand persons," having a "bonded indebtedness of as much as one and one-half million dollars." This act probably does not apply to more than one County in the State.

By referring to Chapter 6476, Laws of 1913, it will also be observed that in counties having fifty thousand population and over the County Commissioners are allowed mileage for inspecting public roads and bridges. This latter act only has application to the counties of Duval and Hillsborough.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

LEGAL ADVERTISING—PAID UPON BASIS OF
NONPAREIL TYPE.

Tallahassee, Fla., December 9, 1918.

*Hon. J. Will Yon, State Auditor,
Capitol.*

Dear Sir:

I am in receipt of your communication of the 9th instant requesting my opinion upon the provisions of Section 1729 of the General Statutes of 1906, with reference to the basis upon which payment should be made for official notices and legal advertisements.

Replying to your inquiry, I beg to advise that the provisions of Section 1729, General Statutes, provides as follows:

"The publisher of any paper publishing official notice or legal advertisement shall not charge more than one dollar per inch for the first insertion, and fifty cents per inch for each subsequent insertion, in single column, nonpareil type; and when any official notice or legal advertisement is required by law to be published more than two months, the charge shall not exceed three-fourths of the above rates for all the excess of time, above two months, of said publication."

It is my opinion that under the provisions of the above Section of Law that payment and auditing of accounts for the publishing by a newspaper of any official notice, or legal advertisement, should be upon the basis of such notice being printed in nonpareil type set solid.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

Opinions to the State Board of Health.**STATE BOARD OF HEALTH—SHOULD PROVIDE
SEGRAGATION.**

Tallahassee, Fla., February 1, 1918.

*Dr. W. H. Cox, State Health Officer,
Jacksonville, Fla.*

My Dear Doctor:

Subject: Leprosy.

I am in receipt of your communication of the 29th ult. with reference to a case of leprosy at Chuluota, Florida, together with several enclosures upon this subject from Dr. J. T. Denton, of Sanford, Florida, to you, and copies of your letters to him, and note that you desire to be advised as to the authority of the State Board of Health in the premises as well as its responsibility for the expenses which may necessarily be incurred in handling this matter.

Replying to your communication, I beg to advise that Section 1120a of the Compiled Laws of Florida, 1914, same being Section 1 of Chapter 5931, Acts of 1908, seems to vest in the State Board of Health the authority "to provide for the care, segregation and isolation of persons having, or suspected of having, any communicable contagious, or infectious disease."

I take it from the language employed in the above provision of law that the State Board of Health has the authority to provide for the segregation of the alleged case of leprosy, and to incur the necessary expenses in connection therewith.

I return herewith the enclosures above stated as per your request.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

STATE BOARD OF HEALTH—AUTHORITY TO
APPROPRIATE ITS FUNDS FOR SOME
SPECIFIC PURPOSE.

Tallahassee, Fla., June 4, 1918.

*Hon. W. H. Cox, State Health Officer,
Jacksonville, Florida.*

Dear Sir:

I am in receipt of your communication of May 27, enclosing resolution adopted by the State Board of Health on May 24, and also certain printed rules and regulations which you desire to know if the State Board of Health has authority to adopt. I also note that you desire to know whether or not the State Board of Health may appropriate Twelve Thousand Dollars for a specific purpose.

Replying to your communication, I beg to advise that I think under the powers given the State Board of Health by Sections 1120 and 1120-A of the Compiled Laws of Florida, 1914, that said Board would have the authority to adopt and promulgate such rules and regulations enclosed in your communication.

Referring to the appropriation of Twelve Thousand Dollars for a specific purpose, I beg to advise that I do not think it was contemplated by the Legislature that the State Board of Health should make exclusive appropriations for specific purposes, but that it might use in a judicious manner such funds as it might be deemed necessary to carry on, and out, the purposes of the State Board of Health.

It seems to me that whatever amount may be necessary to carry on the work covered by the resolutions which you mention in your letter would be a proper expenditure of the funds entrusted to the State Board of Health.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

Opinions to the State Board of Control.

EMPLOYEES OF STATE MAY TERMINATE THEIR EMPLOYMENT BY UNPATRIOTIC CONDUCT.

Tallahassee, Fla., September 7, 1917.

*Honorable Joe L. Earman, Chairman,
Board of Control,
The Capitol.*

My dear Sir:

I am in receipt of your communication relative to the claim of Miss Selma M. Bjorgo, employed as instructor in music in the Florida State College for Women, in which it appears she was dismissed before the close of the term of employment because of unpatriotic conduct objectionable to the President, Faculty and Students of the college, and that she now claims compensation for that portion of the time intervening the dismissal and close of the college term.

I observe you state that no written contract was entered into between the Board of Control and this party and the only record of employment is found to be a motion adopted by the Board of Control appointing her instructor at a salary of eight hundred dollars per year.

We may well assume that in the employment of all instructors, either upon a parol or written contract, it is necessarily implied that they may terminate their own employment by any conduct unbecoming an instructor, and especially conduct of a seditious tendency, without special term of notice being given them. This appears to be more a question of fact than of law. However, the general rule seems to be that where a teacher is regularly dismissed because of conduct unbecoming a teacher, he or she is entitled to no compensation for the services

rendered for the balance of an unexpired term, the conditions being brought on by the teacher's own acts.

Respectfully submitted,

VAN C. SWEARINGEN,

Attorney General.

Opinions to State Road Department.

STATE ROAD DEPARTMENT—METHOD OF APPORTIONING FUNDS TO THE RESPECTIVE COUNTIES.

Tallahassee, Fla., March 13, 1918.

*Hon. William F. Cocke, State Road Commissioner,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your communication of the 1st instant in which you ask the following questions:

"Should the automobile fund apportioned to the several counties under the provisions of Section 27, of the above chapter, be considered as State Aid according to the definition of State Aid as set forth in Section 6, Chapter 7328, Laws of Florida?"

"Where the State Road Department has not designated any State Road in any particular County, under the provisions of Section 6, Chapter 7328, Laws of Florida, but has designated certain roads in that particular County as State Aid Roads under the provisions of the same section, can the State Road Department require that County to meet the automobile fund provided for in Chapter 7275 on a basis of fifty-fifty for either the maintenance of existing roads or the construction of new or unimproved roads?"

"Where any particular County declines to meet the automobile fund, on a fifty-fifty basis, apportioned by law to that County for either maintenance or construction of a State Aid Road, can the State Road Department then arbitrarily make use of the automobile fund apportioned to that County, under the provisions of Section 27, Chapter 7225, for work in some other County which is willing to comply with the requirements of said Department?"

Replying to your communication, I beg to advise that it was the evident intention of the Legislature that Section 27 of Chapter 7275 should be construed in connection with Section 6 of Chapter 7328, Laws of Florida, and with the provision contained in said Section 6 with reference to the matter of State Aid as set out therein.

The apportionment made under Section 27, above mentioned, is defined and is determined upon the basis of the amount of State taxes paid by the several counties of the State, and such funds so apportioned should be used in each County respectively as apportioned thereto. In the use of such sums, however, it is my opinion that the State Road Department should require the counties to furnish an amount equal to the amount so received under the provisions of Section 27 of Chapter 7275.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

STATE ROAD COMMISSIONER—EMPLOYEE AND
NOT AN OFFICER WITHIN MEANING OF CON-
STITUTION.

Tallahassee, Fla., September 27, 1918.

*Hon. W. F. Cocke, State Road Commissioner,
Tallahassee, Florida.*

Dear Sir:

Pursuant to your verbal request to be advised as to whether or not the position you now hold with the State is considered an office within the contemplation of the Constitution of this State, will advise that our Constitution provides that all officerse of this State shall either be appointed by the Governor, or elected by the people, and a commission duly issued for such office under the Great Seal of the State.

Under Section 3, of Chapter 6883, Laws of Florida, Acts of 1915, creating the State Road Department of Florida, it is provided that the State Road Department, consisting of five members appointed by the Governor, shall employ, subject to removal by them, a State Road Commissioner. It is thus seen that you are an employee of the Department to carry out their orders, and not an officer.

Respectfully submitted,
VA C. SWEARINGEN,
Attorney General.

Opinions to the State Shell Fish Commissioner.

FISHING—STATUTES—LOCAL LAWS IN CONFLICT
WITH CHAPTER 6877, ACTS OF 1915, AT THE
TIME OF ITS PASSAGE WERE REPEALED.

Tallahassee, Fla., October 17, 1917.

*Hon. J. Asakiah Williams, Shell Fish Commissioner,
Tampa, Fla.*

Dear Sir:

I am in receipt of your letter of the 16th inst. and note what you have to say therein. As I understand your inquiry, you desire to know whether Chapter 6877, Acts of 1915, repeals all the fishing laws touching the salt water fish industry in this State, whether in conflict or not with this Act.

Replying to your inquiry, I beg to advise that, according to the provisions of Section 26 of the above Chapter, it would seem, that only those laws and parts of laws, whether general or local in their nature, that are in conflict with this Act are repealed thereby. I take it, that it was the intention of the Legislature, that where laws were enacted prior to the time of the enactment of Chapter 6877 and are not in conflict with its provisions, should be construed in connection with it.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

FISHING—WHEN PERSONS USING HOOK AND
LINE ON REEL NOT LIABLE TO LICENSE TAX.

Tallahassee, Fla., December 1, 1917.

*Hon. J. Asakiah Williams, Shell Fish Commissioner,
Tampa, Fla.*

Dear Sir:

I am in receipt of your letter of November 23rd enclosing clipping from Punta Gorda Herald with reference to the matter of persons fishing with hook and line and not being required to pay a license under Section, Chapter 6877, Laws of Florida.

In this connection I wish to quote you a letter written by the former Attorney General on September 21, 1915, which reads as follows:

"I have yours of September 9, submitting the following for my opinion:

"In the matter of the Fish Bill, which passed the 1915 session of the Legislature, it was my understanding that nothing therein applied to fishermen who make their living by catching fish with hooks and line; in fact, Senator Fogarty, Hon. Clarence E. Roberts, and I believe, Commissioner Hodges, himself, were of the same opinion. It would seem that the fishermen around here have been advised to procure a license; as they are not in any exempt from taxation under said Act.

"The language as contained in Section 14, page 12, of paragraph 12, would appear to relieve from taxation these fishermen who use hook and line merely, and in order to satisfy myself and to advise others intelligently in the matter, I would very much appreciate an expression from your office."

"In reply, I beg to advise that you will find the matter of your inquiry covered in the final paragraph of Section 14, Chapter 6877, Acts of 1915.

"From the contents of this paragraph, I would say that persons fishing only with hook and line, rod or reel, would not be required to procure a license."

The law does not seem to make any provision requiring those who fish with hook and line, or with rod and reel, to pay a license tax, even though they sell such fish as may be caught in this manner, and I hardly think that such was the intention of the Legislature at the time of making this law.

This provision of law is broad, and does not seem to make any exception in the case of aliens and non-residents.

With kind regards,
Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

FISHING—WHEN NON-RESIDENTS AND ALIENS
SUBJECT TO LICENSE TAX WHEN FISHING
WITH HOOK AND LINE, ETC.

Tallahassee, Fla., December 20, 1917.

*Hon. J. Asakiah Williams,
Shell Fish Commissioner,
Tampa, Florida.*

Dear Sir:

I am in receipt of your communication of the 19th instant in which you make the following inquiry:

"Is an alien or non-resident of this State who shall engage in taking fish or oysters from the salt waters of this State for any purpose other than his own individual use required to pay a license tax of ten dollars if he takes them with hook and line?"

Replying to the above, I beg to advise that paragraph seven of Section 14 of Chapter 6877 provides as follows:

"Whoever being an alien or non-resident of this State, and who shall engage in taking fish or oysters from the salt waters of this State for any purpose other than his own individual use, shall be required to pay a license tax of ten dollars per annum."

The last paragraph of the above mentioned Section provides as follows:

"The payment of a license tax, or the procuring of any license shall not be required of persons fishing only with hook and line or with rod and reel or similar device."

I take it that it was not the intention of the Legislature to require persons who fish with hook and line only for their individual use to pay a license tax, but when non-residents and aliens use a boat for the purpose of fishing with hook and line for other purposes than their own individual use, then I think they should pay the license required by law.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SHELL FISH FUND—COST OF CERTAIN RECORD
MATERIAL PAYABLE FROM SHELL FISH
FUND.

Tallahassee, Fla., September 25, 1918.

*Hon. J. Asakiah Williams,
Shell Fish Commissioner,
Tampa, Florida.*

Dear Sir:

I am in receipt of your letter of the 17th instant in which you set out three items of expenditure and state that the articles covered by these bills were purchased by

Mr. McRae, and note that you desire to know whether or not you should approve such bills for payment out of the Shell Fish Commission Fund.

Replying to your inquiry, I beg to advise that upon inquiry I find that the first bill of Walker, Evans and Cogswell Company, \$110.67, is for License on boats, and the second bill of this Company is for Index for vessel register, and the bill of Charles G. Schulze is for Metal Tags.

Under the provision of Chapter 6877, licenses and metal tags are necessary in order to warrant the proper administration of the law, and the index for the vessel register is, I should think, a necessary item for keeping a proper record of the vessels that are registered.

Under the provision of Section 22 of the above Chapter, it is provided that all accounts, claims and bills of any nature against the fishing industry shall be paid, when properly approved, out of the Shell Fish Fund. I take it from this provision of law, and the nature of the items included in the bills above mentioned, that it would be proper for these accounts to be paid out of the Shell Fish Fund.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

Opinions to State Veterinarian

STATE LIVE STOCK SANITARY BOARD—ELECTIONS FOR ERADICATION OF TICKS MAY BE HELD AT SAME TIME AS GENERAL OR OTHER ELECTIONS.

Tallahassee, Fla., October 1st, 1917.

*Dr. J. W. DeMilly, Acting State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your communication of the 26th inst. as follows:

"Please advise me, if under the provisions of Chapter 7345, Acts of 1917, any Board of County Commissioners in this State would be authorized to call and hold a special election for the purpose of determining whether or not such County could assume and take up the work of systematic tick eradication, and if such special election could be held at the same time and place with any other special election."

Replying to your inquiry, Section 4 of Chapter 7345, Laws of 1917, provides in part as follows:

"Provided, that the County Commissioners of no county shall appropriate money for dipping vats or co-operation with State or Federal authorities or both in excess of two (2) mills per annum on the assessed valuation of the county, and that no compulsory systematic tick eradication work or compulsory dipping of cattle shall be carried on in any county or district of the State by or with the co-operation of the State Live Stock Sanitary Board, any Board of County Commissioners, or any State Veterinarian, before an election shall have been held in the county or district in which the work is to be carried on and a majority of the qualified electors voting in said elec-

tion have declared in favor of compulsory systematic tick eradication work, or compulsory cattle dipping. Such election may be held at any general elections, or at a special election which shall be called and held according to the laws governing special elections."

It appears from this provision of law that a special election for the purpose of determining whether a county will take up the work of systematic tick eradication, may be held, and that such election may be held at any general election, or at a special election which shall be called and held according to the laws governing special elections.

As I understand the above provision, the election to determine whether the work of systematic tick eradication will be taken up, may be held at the same time that a general or other special election is held.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

LIVE STOCK SANITARY BOARD—AFTER PETITION FOR ELECTIONS, SAME SHOULD BE CONDUCTED AS GENERAL ELECTIONS.

Tallahassee, Fla., October 15th, 1917.

*Dr. J. W. DeMilly, D. V. M., Acting State Veterinarian,
Tallahassee, Fla.*

Dear Sir:

With further reference to your communication of the 26th ult., with reference to that part of Section 4 of Chapter 7345, Laws of 1917, wherein it states "such election may be held at any general election, according to the laws and procedure of general elections, or at a special elec-

tion which shall be called and held according to the laws governing special elections," beg to advise that in as much as the statute does not set out any specific manner for conducting the special election provided for therein, it occurs to me that the proper procedure would be for proper petition to be presented to the Board of County Commissioners, asking that such an election be held. When such an election is called or ordered, it is my opinion that the proper procedure would be to follow the law relating to general elections, as to the manner of providing for and conducting the same.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

Opinions to Naval Stores Inspector.

INSPECTOR NAVAL STORES—"WOOD TURPENTINE" NOT CONTEMPLATED BY SECTION 14 OF CHAPTER 6878.

Tallahassee, Fla., October 17, 1917.

*Mr. K. R. Paderick,
Supervising Inspector of Naval Stores,
Jacksonville, Florida.*

Dear Sir:

In reference to your letter of the 17th of September, to which I replied on the 26th, I beg to advise that I have given the matter further consideration and desire to say in addition to what I wrote you upon the question, that while "wood turpentine" comes within the provisions of the law, that is to say it must be properly marked or stamped, etc., yet I do not think that it comes within

that provision thereof as is provided by Section 14, which provides that "It shall be unlawful for any person to sell in, or ship from this State, any spirits of turpentine or rosin in barrels or bulk of one hundred pounds or more, unless the same shall have been inspected and branded by an inspector duly appointed and qualified under the provisions of this act. * * *"

It seems that spirits of turpentine and rosin are the only products included in that provision of the law that requires an inspection before selling or shipping by a duly appointed inspector.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

**INSPECTOR NAVAL STORES—INSPECTION FEES
EQUALLY DIVIDED BETWEEN VENDOR AND
PURCHASER.**

Tallahassee, Fla., December 31, 1917.

*Mr. K. R. Paderick,
Inspector of Naval Stores,
Jacksonville, Florida.*

Dear Sir:

Replying to your request for my opinion upon the question of the payment of fees for the inspection of naval stores under the circumstances as contained in the letter of The Proctor & Gamble Company, of Cincinnati, Ohio, to you under date of December 20, 1917, I beg to advise that Section 10 of Chapter 6878, Laws of Florida, Acts of 1915, provides in part as follows:

"The Supervising Inspector of Naval Stores shall receive as compensation for his services one-half cent for

each barrel of rosin or spirits of turpentine which may be inspected under the laws of this State; said fee shall be paid equally by the buyer and seller of such naval stores."

It seems to me that under this provision of law that The Proctor & Gamble Company should pay half of the inspection fees due for the inspection of such naval stores as the purchaser.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

Opinions to State Hotel Commissioner.

HOTEL COMMISSIONER—NO AUTHORITY TO
MAKE RULING THAT HOTEL WATCHMAN BE
A WHITE MAN.

Tallahassee, Fla., January 31, 1917.

*Hon. A. L. Messer, Hotel Commissioner,
Tallahassee, Fla.*

Dear Sir:

I have your communication of January 25 submitting the following inquiry:

"Will you please advise me if I have the right (under Chapter 6592, No. 146, Laws of Florida pertaining to Hotels, Rooming-Houses and Restaurants), to make a ruling wherein a hotel having not less than a given number of rooms—say twenty or more—to require them to keep a white man as a watchman on during the time when the hotel is occupied at night with ten or more guests?"

In reply I beg to advise that there appears to be no

authority under the provisions of Chapter 6952, Acts of 1915, whereby you could require hotels, under such conditions as you state, to employ a white man as watchman during the time when the hotel is occupied.

Respectfully submitted,

T. F. WEST,
Attorney General.

HOTEL COMMISSIONER—AUTHORITY TO REVOKE
HOTEL LICENSE BECAUSE OF UNWHOLE-
SOME MEATS.

Tallahassee, Fla., August 1, 1917.

*Hon. Jerry W. Carter, Hotel Commissioner,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your communication of the 30th ultimo enclosing a letter dated May 24, 1917, from R. C. L. Robinson, of Gainesville, Fla., to Secretary United Com. Travelers, Jacksonville, Florida, setting out a number of facts relative to a certain party in Gainesville, the proprietor of a restaurant, having stored in his storeroom unwholesome meats, and asking to be advised as to "what method or what law would be the most effective," and whether you "have the right to close up the man's place of business," etc.

In effect, you desire to know whether or not the proprietor of the restaurant in question has violated any of the provisions of Chapter 6952, Acts of 1915, Laws of Florida.

It appears from the facts as set out in your communication and letter enclosed therewith that the keeper of

the restaurant in question had stored in his storeroom unwholesome meats. I think that you may, if in your discretion you deem the facts sufficient to warrant it, revoke his license.

It is also probable that proceedings might be instituted against him under Section 10 of the above mentioned chapter. In such event the matter should be taken up with the proper prosecuting attorney and handled by him.

Respectfully,
T. F. WEST,
Attorney General.

HOTEL COMMISSIONER—AUTHORITY TO COMPEL
INSTALLATION OF TRANSOMS IN HOTEL
BUILDINGS.

Tallahassee, Fla., September 29, 1917.

*Hon. Jerry W. Carter, Hotel Commissioner,
Tallahassee, Florida.*

Dear Sir:

I am in receipt of your letter of the 21st inst., as follows:

"It has come to my observation that there are many buildings that were erected prior to the Enactment of Section Thirteen (13), of Chapter 6952, No. 146, Acts of Legislature 1915, the Law Creating the 'Hotel Commission.'"

"I would like to be advised as to whether or not the Hotel Commissioner can lawfully enforce the owners of such buildings to install transoms and other methods of ventilation in such manner as to comply with the latter

part of Section 12, and the entire Section 13 of the above mentioned Act?"

"If they can be lawfully compelled to comply with this Section 13, what would be the proper method in starting procedure to compel compliance with this Law?"

Replying to your inquiry I beg to advise that Section 12 and 13 of Chapter 6952, Laws of Florida, Acts of 1915 provides as follows:

"Sec. 12. Every hotel, rooming house and restaurant in this State shall be properly plumbed, lighted, heated and ventilated, and shall be conducted in every department with strict regard to health, comfort and safety of the guests. Provided, that such proper lighting shall be construed to apply to both daylight and illumination, and that such proper plumbing shall be construed to mean that all plumbing and drainage shall be constructed and plumbed according to approved sanitary principles, and that such proper ventilation shall be construed to mean at least one door and one window in each sleeping room; also a transom as wide as the door leading into the hallway."

"Sec. 13. No room shall be used for a sleeping room which does not open to the outside of the building or light wells, air shafts or courts, and all sleeping rooms shall have at least one window and one door with a transom as wide as the door.

"In each sleeping room there must be at least one window with opening so arranged as to provide easy access to the outside of building, light wells or courts.

"Provided, that hotels, rooming houses and restaurants shall be allowed sixty days after receipt of notice from the Hotel Commissioner in which to comply with the provisions of this section."

From the proviso to section 13 above quoted it will be observed that sixty days is allowed after receipt of notice from the Hotel Commissioner in which to comply with the provisions of this section.

In cases where the sixty days notice has been given and the law has not been complied with, the matter could, under the provisions of Section 29 of said act, be brought to the attention of either the County Prosecuting Attorney, County Solicitor or State Attorney for such action as might be appropriate in order to cause a compliance with the provisions of the above mentioned law.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

METHOD OF PROCEDURE TO COMPEL INSTALLATION OF SCREENS IN HOTELS AND BOARDING HOUSES.

Tallahassee, Fla., October 1st, 1917.

*Jerry W. Carter, Hotel Commissioner,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your communication of the 21st inst. as follows:

"I would like to be advised as to whether or not the 'Hotel Commission' can enforce the owners of hotel buildings, rooming-houses, or a building in which a restaurant or lunch-stand is being conducted to properly screen all outside openings (doors and windows), and if the Hotel Commissnoner can lawfully compel said property owners to screen such above mentioned buildings, what would be the proper way to proceed in bringing a procedure to compel a compliance with Section 32, Chapter 6952, Acts of Legislature 1915?"

'Section 32, Chapter 6952, Laws of Florida, Acts of 1915, provides as follows:

"Sec. 32. All hotels, rooming houses and restaurants shall screen all outside doors and windows in such manner as will meet approval of Hotel Inspector in accordance with Section 10 of this Act."

Section 29 of said chapter provides as follows:

"Sec. 29. Every county prosecuting attorney, county solicitor and State's attorney of this State is hereby authorized and required upon complaint on oath of the Hotel Commissioner or other persons, to prosecute to termination before any court of competent jurisdiction in the name of the State of Florida, a proper action or proceedings against any person or persons violating the provisions of this Act, and he shall make immediate report to State attorney.

"The Hotel Commissioner is authorized and empowered to proceed in the courts by mandamus or injunction, wherever such proceedings may be necessary to the proper enforcement of the provisions of this Act or the rules, regulations and orders lawfully entered and promulgated by the said Hotel Commissioner under authority of this Act."

From the provisions of Section 32 it appears that it is made the duty of keepers of hotels, rooming houses and restaurants to screen all outside doors and windows in such manner as will meet the approval of the Hotel Inspector and under the provisions of Section 10 of the Act upon the failure or refusal of any person to carry out the duty imposed upon him by the Act he shall be guilty of a misdemeanor.

Section 11 of the Act provides how the Hotel Commissioner shall proceed upon ascertaining by inspection that any hotel, rooming house or restaurant is being carried on contrary to the provisions of the Act.

Under Section 29 of the Act it is made the duty of every County Prosecuting Attorney, County Solicitor and State Attorney, upon complaint on oath of the Hotel Commissioner or other person to prosecute a proper action or

proceeding against any person or persons violating the provisions of the Act.

From the provisions of law above quoted and referred to it is my opinion that when a hotel, rooming-house or restaurant owner or keeper fails to comply with the law as provided in Section 32 of Chapter 6952, you should take the matter up with one of the officers mentioned in Sections 11 and 29 whose duty it is to prosecute the case as is provided in said Sections.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

HOTEL COMMISSIONER—WHAT MAY BE CONSID-
ERED A "ROOMING HOUSE."

Tallahassee, Fla., July 27, 1918.

*Hon. Jerry W. Carter, Hotel Commissioner,
Tallahassee, Fla.*

Dear Sir:

I am in receipt of your letter of the 24th instant and note what you have to say with reference to the question of the payment of a license required of persons conducting a rooming house, and with special reference to the case of a house owned by the mother of Mr. H. O. Anson, of Pensacola, Florida.

Replying to your communication, I beg to advise that Mr. Anson in a letter to me, without date, wrote as follows:

"My mother, who is temporarily out of the city, has rented her home on the Bay Shore, this county, to five couples, each of whom is doing their own cooking just

as they would do if in their own homes. They have their own apartment, so I am of the opinion that the house would be classed as, or called, an apartment house. I was called upon recently by a representative of the State for the payment of a tax which he claimed due under Section Three (3) of the Law of 1915, known as the "Hotel Law." I told Mr. Fleming, the representative, that the house was not being operated as a "Rooming House," but as an apartment house, and that the occupants were permanent dwellers just the same as though they lived in separate homes as they cooked and ate there, too. He took the matter up with the Hon. Jerry Carter, State Hotel Commissioner, and I received a letter from Mr. Carter under date of the 27th ultimo, and another date of the 9th instant in reply to one I wrote him under date of the 29th ultimo, and in which I explained to him that the house was being used as an apartment house, and not a rooming house; there being, in my opinion, considerable difference between the two. Kindly give me your opinion about the case, as the law quoted appears very plain as to what constitutes a "Rooming House," but says nothing about an apartment house. If there is a State law requiring that a tax be paid on apartment houses, my Mother owes it, and I want to pay it."

From the statement of facts as set out in Mr. Anson's letter, I do not think that such a house is covered by the provisions of paragraph 2, Section 3, of Chapter 8952, Acts of 1915, which reads as follows:

"Every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests, in which five or more rooms are used for the accommodation of such guests, but which does not maintain dining rooms or cafes in the same building or in buildings in connection therewith, shall, for the purposes of this act, be deemed a rooming house, and upon proper application, the Hotel

inspector shall issue to such above described business a license to conduct a rooming house."

As stated, if the statement of facts as contained in Mr. Anson's letter are correct, Mrs. Anson, in my opinion, is not running or operating a rooming house in contemplation of paragraph 2, Section 3, of Chapter 6952, Acts of 1915.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

Opinions to the Board of Commissioners of State Institutions.

STATE PRISONERS—GRADE TWO MAY BE LEASED FOR FARM LABOR.

Tallahassee, Fla., November 9, 1917.

*Hon. J. S. Blitch, Secretary,
Capitol.*

Dear Sir:

Replying to your verbal inquiry with reference to the letter from Mr. E. G. Beucher, Manager of Anthony Farms, Anthony, Florida, to you, which letter reads as follows:

"Replying to yours of recent date, I could use No. 2 farm men in place of the men I am to get, if the price could be agreed upon, and I would be prepared to handle these men by December 1st."

Under Section 1, of Chapter 7324, Laws of Florida, Acts of 1917, all State convicts are graded into three classes. Class one consists of all able bodied males;

class two consists of all hospital subjects and all prisoners unable to perform reasonable manual labor; and class three consists of all male convicts who have actually served for ten years or more, and all male convicts who shall not be classed as able bodied, but who are physically able to perform reasonable manual labor upon the public roads.

It is provided by the above Section that all convicts of grade two, and all female convicts shall be maintained at the State Prison Farm.

Section 4 provides that all able bodied negro male prisoners not needed by the Board of Commissioners of State Institutions for work at the State Prison Farm shall be leased by said Board.

Under the provisions of Section 1, fixing the grades, or classes of prisoners, there seems that there might be convicts of two grades that could be classed as *able bodied*, to-wit: Those convicts classed as Grade One convicts, and those of Class Three who have actually served for ten years or more.

The class of convicts last mentioned may be *able bodied*, but on account of the time they have served are graded as Class Three. Those of this class who are able bodied may, it seems to me, under the provisions of Section 4 above mentioned, be leased if it be the desire of the Board so to do.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

INDUSTRIAL SCHOOL FOR BOYS—AUTHORITY OF
TRIAL JUDGE AND BOARD OF PARDONS AS
TO COMMUTATION OF SENTENCE.

Tallahassee, Fla., November 19th, 1917.

*To the Board of Commissioners of State Institutions,
Tallahassee, Fla.*

Gentlemen:

Upon an investigation of the law with reference to the release, discharge or parole of persons who have been committed to the Florida Industrial School for Boys, I find that Chapter 7377, Laws of Florida, Acts of 1917, which amends Section 5 of Chapter 6919, Acts of 1915, provides as follows:

"Sec. 5. When any boy shall be committed by the Judge of any Court in the State of Florida to the Florida Industrial School for Boys said commitment shall be for such period as the committing Judge shall deem proper, or until he shall reach his majority, or unless discharged earlier by the Board of Managers as reformed."

Section 2 of this Act provides that:

"Sec. 2. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed."

Chapter 6916 is "An Act appropriating funds for the purpose of erecting buildings and furnishing equipment, and for the operation, maintenance and management of the Florida Industrial School for Boys, and providing for the payment of such appropriations."

The provisions of Section 5 of Chapter 6916 as amended by Chapter 7377 is the last expression of the Legislature upon the question of the commitment of boys to the Florida Industrial School for Boys and also the manner of their release or discharge therefrom.

The provisions of law above quoted and mentioned are applicable to boys who are offenders against the law.

Chapter 6216, Laws of Florida, Acts of 1911, is "An Act to define and regulate the treatment and control of dependent and delinquent children; to provide for the disposition, care, education, protection, maintenance and punishment of delinquent or dependent children, and for their guardianship and adoption; to prescribe the power and duties of County Judges and the several courts of the State with respect thereto, and to fix penalties for the violation of the terms of this Act."

Sections 6 and 9 of this Act provide as follows:

"Sec. 6. When any child less than seventeen years of age shall be found to be dependent, within the meaning of this Act, the County Judge may make an order committing the child to the care of some suitable State or county reformatory or institution, which is now or may hereafter be provided or to the care of some suitable citizen of good moral character, or to the care of some suitable private institution or association willing to receive it, and embracing in its object the purpose of caring for or obtaining homes for dependent or neglected children. The judge may thereafter set aside, change, or modify such order or commitment, in his discretion. The judge may, when the health or condition of the child requires it, cause the child to be placed in a public hospital or institution, for physical treatment or special care, or in a private hospital or sanitarium which is willing to receive it, for the like purpose, without charge."

"Section 9. When any child less than sixteen years of age shall be arrested, with or without warrant, and brought before any Justice of the Peace, Municipal Court or other court, the magistrate or judge presiding over such court either before trial or after trial and conviction, but before sentence, may, in his discretion, take charge of the custody of such child in the same manner as provided herein for the County Judge to take charge of delinquent children, or he may make and enter an order remanding the custody of such child to the Probation

Officer to be dealt with as delinquent children are herein provided to be dealt with. If such order is made after trial and conviction, but before sentence, and such child is afterwards found to be incorrigible, or incapable of reformation, or dangerous to the welfare of the community, the judge or magistrate may order the arrest of such child and sentence such child as if the sentence had not been suspended. By committing a child to a Probation Officer to be dealt with as a delinquent child in the manner herein provided for, the court or judge after trial and conviction shall not lose jurisdiction to sentence."

It appears from the provisions of these two Sections of law that the County Judge is vested with the authority to change, set aside or modify his order of commitment in the case of dependent and delinquent children, except in such cases as are enumerated in Section 10 of the above mentioned Act.

While Chapter 6916 as amended by Chapter 7377 and Chapter 6216 are separate and independent statutes, yet it is my opinion that inasmuch as Section 5 of Chapter 6916 as amended by Chapter 7317, covers *any boy* committed to the Florida Industrial School for Boys, when committed by the Judge of any court in the State of Florida, that the Board of Managers (Board of Commissioners of State Institutions) has concurrent authority, with the Judge committing, under the provisions of Chapter 6216 (The Dependent and Delinquent Child Act), in the matter of discharging boys committed under this Act, and that when otherwise committed the Board of Commissioners of State Institutions have the exclusive right to discharge from said institution.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

REWARDS—OFFICERS MAY ACCEPT REWARDS
FOR APPREHENDING CRIMINALS.

Tallahassee, Fla., February 5, 1918.

*Hon. J. S. Blitch, Secretary,
Board of Commissioners State Institutions,
Tallahassee, Florida.*

Dear Sir:

On November 7, 1917, this office wrote you with reference to the matter of whether or not a public officer, such as a Sheriff, Constable, or Policeman, was entitled to a reward offered for the arrest or conviction of a criminal.

Upon further investigation of this subject, I beg to advise that Section 3480-C of the Compiled Laws of Florida, 1914 (Section 4, of Chapter 5416, Acts of 1905), provides as follows:

"That nothing herein shall be construed so as to preclude a Sheriff or his deputies, City Marshal or Policeman, from accepting rewards or remunerations for services performed in apprehending any criminal."

It would appear from the above provision of law that in this State the officers mentioned may receive rewards or remunerations for services performed in apprehending criminals.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

INDUSTRIAL SCHOOL FOR BOYS—AUTHORITY TO
COMMUTE SENTENCE OF BOYS FROM STATE
PRISON TO INDUSTRIAL SCHOOL.

Tallahassee, Fla., October 5, 1917.

*To the Hon. Board of Pardons,
Tallahassee, Florida.*

Gentlemen:

Replying to your verbal request for my opinion upon

the matter contained in letter from Hon. M. F. Horne, Judge of the Third Judicial Circuit to your honorable body, relative to one Mosley Purvis, a boy of only sixteen years of age who is serving a five year sentence in the State Prison, beg to advise that Section 4175-c of the Compiled Laws of Florida 1914, provides as follows:

"417-c. PARDON BOARD MAY COMMUTE PUNISHMENT TO COMMITMENT TO REFORM SCHOOL; REVOCATION OF COMMUTATION.—When any child under the age of eighteen years shall be sentenced by any court of competent jurisdiction to imprisonment in any county jail, or to the State's prison, it shall be lawful for the Pardoning Board, upon the application of such child, his parents or guardian, or other persons, to commute the punishment by substituting therefor the commitment of such child to the Reform School, during such time as the Pardoning Board may deem proper, unless sooner discharged by the Board of Managers.

But if such child, after being sent to such institution shall persist in a depraved course, or escape therefrom, it shall be in the power of the Pardoning Board to revoke said commutation and to remand him to the State's prison or jail whence he came, to serve out his unexpired term."

This provision of law fully authorizes the Pardoning Board to commute the punishment by substituting therefore the commitment of this boy to the Reform School.

Yours truly,

VAN C. SWEARINGEN,

Attorney General.

UNOFFICIAL LETTERS OF THE ATTORNEY GENERAL.

The following are some of the letters written in answer to the unofficial communications referred to heretofore in this report. These letters are of a general character, and may be of some benefit to county officials and the public generally; therefore, they are incorporated herein.

NAVAL STORES INSPECTION.

Tallahassee, Fla., September 24, 1917.

My dear Sir:

I beg to acknowledge receipt of your letter of the 19th instant asking the following question, to-wit:

"Can a Naval Stores Factor doing business in Savannah, Ga., come in this State and buy naval stores on an operators yards and ship outside of State without first having same inspected? And which one has violated the law, the buyer or the seller?"

Replying thereto beg to advise that Section 14, of Chapter 6878, Laws of Florida, Acts of 1915, provides that "it shall be unlawful for any person to sell in, or ship from this state, any spirits of turpentine or rosin in barrels or bulk of one hundred pounds or more, unless the same shall have been inspected and branded by an inspector duly appointed and qualified under the provisions of this Act; . * * *."

This provision of law seems to fully answer your inquiry.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

ROADS AND BRIDGES—CONSTRUCTION, ETC.—
OVERSEER SHOULD NOT BE MEMBER BOARD
COUNTY COMMISSIONERS.

Tallahassee, Fla., January 6, 1917.

Dear Sir:

I have your communication of January 2, and in reply beg to advise that the construction, alteration or repair of roads and bridges in this State, under the provisions of Section 2, of Chapter 6537, Acts of 1913, is entirely in the discretion of the boards of county commissioners in this State, and, in view of this provision, could be constructed by contract or otherwise.

Section 851 of the General Statutes of Florida was amended by Sections 4 and 6, of Chapter 6537, Acts of 1913, and Section 852 of the General Statutes was amended by Section 5, of Chapter 6537, Acts of 1913.

In view of these statutes and the several other statutes prescribing the duties and powers of boards of county commissioners in this State, I do not think that it would be advisable for such boards to employ their members as road overseers.

The Attorney General is not authorized to officially advise in matters of this kind. This is merely to assist you in arriving at a proper conclusion in the premises, which I shall take pleasure in doing at any time.

Yours very truly,

T. F. WEST,
Attorney General.

EXPENSES OF BOND ELECTIONS AND IN ORGAN-
IZING WORK FOR GOOD ROADS PAID FROM
BOND PROCEEDS.

Tallahassee, January 9, 1917.

Dear Sir:

Referring further to the question of taking care of the expenses incurred in the conduct of the bond election and the issue and sale of bonds for the construction of roads in your county, beg to advise that in my opinion such expenses are properly payable from the funds received from the sale of such bonds.

The expenses incurred in organizing the work to be done would, in my opinion, also be payable from this fund, but great care should be exercised in expending this money on this account, to the end that no unnecessary or improper items may be charged against it.

With reference to the item of expenses incurred on the trips to Miami and to points in North Carolina and Georgia for the purpose of investigating engineers for this work, I think there is considerable doubt, but if your board regard these items as necessary and proper charges, they should, in my opinion, also be paid from this fund.

The Attorney General is not authorized to officially advise in a case of this kind and you will understand of course that this letter cannot be regarded as an official expression from this office.

Yours very truly,

T. F. WEST,

Attorney General.

OFFICES—JUSTICE OF PEACE AND MEMBER
BOARD PUBLIC INSTRUCTION MAY BE HELD
BY SAME PERSON.

Tallahassee, January 10, 1917.

Dear Sir:

I have your communication of January 8th, and in reply beg to advise that the subject-matter of your inquiry is fully covered in the latter part of Section 15 of Article XVI of the Constitution of Florida, which reads as follows:

"And no person shall hold or perform the functions of more than one office under the government of this State at the same time; provided, notaries public, militia officers, county school officers and commissioners of deeds may be elected or appointed to fill any legislative, executive or judicial office."

In view of the law as above quoted, and the fact that a member of the Board of Public Instruction is a county school officer, and a Justice of the Peace would be a judicial officer, I am of the opinion that you would be authorized to perform and exercise the functions of both of these offices at one and the same time.

With very kind personal regards to you and yours, I am

Yours very truly,

T. F. WEST,

Attorney General.

OFFICES—JUSTICE OF PEACE AND NOTARY PUBLIC
MAY BE HELD BY SAME PERSON.

Tallahassee, January 10, 1917.

My Dear Sir:

Yours of the 9th instant has been received.

Under separate cover I am forwarding you by this mail

copy of the Fee Bill for the various county officers prepared by this office.

There is, in my opinion, no legal objection to your holding the two positions of Justice of the Peace and Notary Public at the same time.

Yours very truly,

T. F. WEST,

Attorney General.

SCHOOL FUNDS—POLL TAX PAID INTO CANNOT BE REFUNDED.

Tallahassee, Fla., January 12, 1917.

Dear Sir:

Yours of the 10th instant has been received.

I note your inquiry as follows:

"Two parties who are overage have paid their poll taxes by mistake in this county and have asked the School Board to refund the money. I would thank you to advise me what authority the School Board would have in the matter of this kind."

There is no authority that I know of permitting a refund by the board of public instruction of the county of moneys received by the school fund of the county in this way.

The Attorney General is not authorized to officially advise in a case of this kind and this letter, therefore, cannot be regarded as an official expression from this office.

With kind personal regards, I am

Yours very truly,

T. F. WEST,

Attorney General.

SCHOOL FUNDS MAY BE SUPPLIMENTED WITH
MONEY BORROWED ON SHORT TIME WAR-
RANTS.

Tallahassee, Fla., January 13, 1917.

Dear Sir:

I have your letter of January 11th, and in reply beg to advise that Chapter 6828, Acts of 1915, authorizes all Boards of Public Instruction in this State to borrow money to pay all outstanding indebtedness incurred prior to July 1st, 1915; and, in addition to this, the act authorizes Boards of Public Instruction to borrow money to meet the current expenses of the board, which latter borrows shall not exceed eighty per cent of the estimated income or revenue derived by the Board during the current year, and as to this latter borrow the law requires that as such borrows are made from year to year each borrow must be paid before additional ones are made, the statute being designed to allow Boards of Public Instruction to fund their outstanding indebtedness and begin July 1st, 1915, square with the world, and subsequent to which time they should live within their income.

In view of this provision, I know of no reason why Boards of Public Instruction should not borrow on short time warrants in the manner suggested in your letter.

With very kind personal regards,

Sincerely,

T. F. WEST,
Attorney General.

SHERIFF'S COMMISSIONS NOT ALLOWED ON
AMOUNTS RECEIVED FOR HIRE OF CON-
VICTS.

Tallahassee, Fla., January 15, 1917.

My dear Sir:

Yours of the 13th instant has been received and noted.

There is no authority that I know of for paying sheriffs of the counties in this State a commission upon the amounts received by the counties for the hire of county prisoners. The contracts for the lease of county prisoners are made by the boards of county commissioners and the money is due by the lessees to the counties and does not necessarily pass through the hands of the sheriffs.

Yours very truly,

T. F. WEST,
Attorney General.

SCHOOL DISTRICTS—ORGANIZATION OF
SPECIAL TAX.

Tallahassee, Fla., January 22, 1917.

My dear Sir:

I am in receipt of your inquiry as follows:

"Please advise me whether or not we can organize a whole county into a special school sub-district."

Special tax school districts are organized under the provisions of Sections 399 to 416 of the General Statutes. This law seems to contemplate that a special tax school district shall not embrace the whole county but shall be some subdivision of the county.

I think, therefore, that a sub-district embracing the entire county is probably unauthorized and that the validity of such district would be doubtful.

The Attorney General is not authorized to officially advise in a case of this kind and, therefore, what is said in this letter cannot be regarded as an official expression from this office.

Yours very truly,
T. F. WEST,
Attorney General.

SCHOOL DISTRICTS—SPECIAL TAX TRUSTEES—
MILLAGE.

Tallahassee, Fla., February 2, 1917.

My Dear Sir:

I have your communication of January 31st relative to the enlargement of special tax school districts in this State, and in reply beg to advise that Section 400 of the General Statutes provides for the creation of such special tax school districts, and that Section 401 of the General Statutes provides that all such special tax school districts shall continue until disestablished or changed by like proceedings as those by which they were created.

Construing these two statutes together it would seem that the legislature contemplated that when a special tax school district was created and the trustees elected and the millage assessed, such trustees would hold for the ensuing two years, and the millage voted would be collectable for the ensuing two years; and that if a district should be enlarged in the meantime that the enlarged portion would become a part of the original district, under the terms and conditions already imposed.

It might be possible, however, as the law is not specific, that our courts would take a different view.

Section 404 of the General Statutes provides that all special tax school districts elections, except as provided in this act, shall be held and conducted in the manner prescribed by law for holding general elections. Section 209 of the General Statutes, affecting general elections, provides that the polls shall open at 8 o'clock. If it could be made affirmatively to appear that electors entitled to vote were deprived of their franchise by reason of the fact that the polls did not open till 12 o'clock, I am inclined to the view that such election would not be valid.

The Attorney General is not authorized to officially advise in the matter of this kind. This is merely to assist you in arriving at a proper conclusion in the premises, which I shall take pleasure in doing at any time.

Yours very truly,

T. F. WEST,
Attorney General.

SCHOOL DISTRICTS, SPECIAL BOND ISSUE.

Tallahassee, Fla., February 2, 1917.

My Dear Sir:

I have your communication of January 31st, and in reply beg to advise that Chapter 6542, Acts of 1913, providing for the issuance of bonds by special tax school districts in this State, places no limitation on the amount of such bonds a district may issue.

Section 2 of the act above referred to provides that the Board of Public Instruction by resolution may determine the amount of such bonds to be issued, and in de-

termining such amounts the taxable assessment and the needs of the district should be the first considerations.

Yours very truly,

T. F. WEST,

Attorney General.

SHERIFFS MILEAGE.

Tallahassee, Fla., February 9, 1917.

My dear Sir:

Yours of the 7th instant has been received. I note your inquiry as follows:

"Please settle controversy by answering the following questions or problems:

"1. Sheriff leaves court house in Florida and travels forty miles to State line and fifteen miles into Alabama to point indicated on map, where he arrests prisoner and carries him back to court house in Florida. How much mileage is he entitled to?

"2. Sheriff leaves court house and travels thirty miles to point indicated, and arrests two prisoners and carries them back to court house. How much mileage is he entitled to?

"A plain answer to these two problems, in figures, will be very much appreciated. Kindly return this sheet with your reply, and greatly oblige."

I will answer your questions in the order stated.

1. When the sheriff of any county of this State goes beyond the limits of the State to bring back a prisoner, he is paid the sum of five cents per mile for the actual distance traveled from the court house of the county to the point where the prisoner is taken into custody. This compensation is fixed by Chapter 5407 of the Acts of 1915.

2. If the sheriff makes only one trip, the fact that he arrests more than one prisoner on the trip does not, in my opinion, authorize a charge against the county for more than one trip. Under Section 1684 of the General Statutes arresting officers are prohibited from charging constructive mileage against the county, and under Section 4065 of the General Statutes sheriffs are required, in presenting bills covering mileage, to certify that no constructive mileage is charged therein.

The Attorney General is not authorized to officially advise county officers and, therefore, this letter cannot be regarded as an official expression from this office, but only as representing my views as an attorney on the questions about which you inquire.

As requested I am returning herewith the diagram which accompanied your letter.

Yours very truly,

T. F. WEST,

Attorney General.

BOARD OF PUBLIC INSTRUCTION MAY ISSUE DUE BILLS.

Tallahassee, Fla., February 10, 1917.

My Dear Sir:

Yours of the 7th instant has been received and noted.

There seems to be no legal objection to the issuance of obligations in the nature of due bills by a board of public instruction for the purpose of taking care temporarily of expenses necessarily incurred by such board, provided, of course, such obligations are kept within the budget of expenses previously prepared by the board as required by law, but, in view of the legislation on this subject generally, passed at the last session of the leg-

islature, I would suggest that you stay very near the shore on this proposition and incur only such expenses as are imperative. This suggestion is made in order that your board may not violate the spirit of the legislation mentioned, and it seems to be necessary from the financial statement sent me, it appearing from this statement that the income for the present year will not take care of obligations already existing.

The purpose of the legislation mentioned was to require county boards to live within their incomes, but the legislature probably made a mistake in not allowing further time in which to transfer from a credit to a cash basis. However, we have nothing to do with the question of the wisdom of the legislation, and the local officers should, if possible, work out a plan for taking care of the imperative needs of the situation without violating the law until the next legislature meets, when the statute may be modified so as to give more time for placing the counties on a cash basis.

The Attorney General has no authority to officially advise county officers and, therefore, this letter cannot be regarded as an official expression from this office. It represents simply my views as an attorney and is written in reply to your inquiry with a view to assisting you, if possible, in taking care of the existing situation.

Yours very truly,

T. F. WEST,
Attorney General.

COUNTY OFFICERS—HOW ELECTED.

Tallahassee, Fla., March 13, 1917.

My Dear Sir:

I have your communication of March 5, and in reply beg to advise that Section 6 of Article VIII of the Con-

stitution appears to cover the subject-matter of your inquiry, and in effect provides that county officers shall be elected by the people and that their duties and compensation shall be prescribed by law.

It has been a custom of the legislature, in passing acts affecting terms and compensations of the various State and county officers, to carry a provision in such acts that they shall not become effective until the expiration of the terms then being served, but, in view of the provision of the Constitution as above reverred to, it appears that the time of making such acts effective would be entirely within the discretion of the legislative body.

The Attorney General is not authorized to officially advise in matters of this kind. This is merely to assist in arriving at a proper conclusion in the premises, which I shall take pleasure in doing at any time.

Yours very truly,

T. F. WEST,

Attorney General.

BOARD OF PUBLIC INSTRUCTION, NOT AUTHORIZED TO BORROW MONEY FROM SPECIAL TAX SCHOOL DISTRICT.

Tallahassee, Fla., March 15, 1917.

My dear Sir:

Yours of recent date has been received.

Replying to same will say that there is no statute in this State specifically authorizing the board of public instruction of a county in this State to borrow money from a special tax school district. Neither is there a statute authorizing such a district to loan any funds that it may have to its credit at any time.

The Attorney General is not authorized to officially advise in reference to a matter of this kind and, therefore, this letter cannot be regarded as an official expression from this office.

Yours very truly,
T. F. WEST,
Attorney General.

OFFICERS, HOLDING COUNTY AND MUNICIPAL
AT SAME TIME.

Tallahassee, Fla., March 19, 1917.

My dear Sir:

Yours of the 17th instant has been received. I note your inquiry as follows:

"Am writing you for little information in regards to county officer holding office under bond can he hold office in city. That is to say can a justice of the peace hold office as Mayor in town. As our town election comes off in April and my friends want me to run for the office.

"The Mayor is not under any bond in the city it seems to me that it would be legal to hold both."

There is nothing in the law in this State which forbids a person holding the office of mayor of the town and justice of the peace at the same time.

Yours very truly,
T. F. WEST,
Attorney General.

OFFICERS, HOLDING COUNTY AND MUNICIPAL,
AT SAME TIME.

Tallahassee, Fla., March 21, 1917.

My dear Sir:

Yours of the 17th instant has been received. I note your inquiry as follows:

"I am Justice of the Peace for District No. 4, in this county. My friends want me to run for Mayor of the town. Can I hold the office of J. P. and Mayor at the same time or will it be contrary to the State Constitution in regard to holding two offices by the same man."

Replying to same will say that there is nothing in the law in this State that would prevent one individual holding the positions of Justice of the Peace and Mayor of a town in this State at the same time.

Yours very truly,

T. F. WEST,
Attorney General.

COUNTY PRISONERS—COUNTY COMMISSIONERS
NOT AUTHORIZED TO REDUCE TERM OF
SENTENCE.

Tallahassee, Fla., March 23, 1917.

My dear Sir:

Yours of the 20th instant has been received and noted.

The last statute on the subject referred to is Chapter 6917 of the Acts of 1915, but this seems to apply only to State prisoners.

There is no statute that I know of authorizing the

sheriff or board of county commissioners to reduce the term for which a county prisoner is sentenced by the court trying the case.

The Attoreny General is not authorized to officially advise in matters of this kind and, therefore, what is said in this letter cannot be regarded as an official expression from this office.

Yours very truly,
T. F. WEST,
Attorney General.

CONSTABLE NOT AUTHORIZED TO APPOINT
DEPUTY.

Tallahassee, Fla., April 12, 1917.

My dear Sir:

Yours of the 11th instant has been received and noted.

Under the laws of this State a constable is not authorized to appoint one to act in his place during his absence from the district, but, if you are only temporarily out of the district for a short time, the justice of the peace of the district could appoint some one, as occasions require, to serve papers issued from his court during your absence.

Yours very truly,
T. F. WEST,
Attorney General.

SPECIAL ROAD AND BRIDGE DISTRICTS, COUNTY COMMISSIONERS AS BOARD OF EQUALIZERS.

Tallahassee, Fla., April 10, 1917.

My Dear Sir:

Your letter of the 6th instant duly received, as follows:

"As Commissioner for Sumter County, and the Commissioner from the particular district affected, I wish to know whether or not we have the right, under the statutes providing for special Road and Bridge Districts, when roads are to be constructed, to accept from the contractors a personal bond.

"Also when we, as Commissioners, are sitting as a board of equalizers on the tax returns will be authorized to demand the books and records of an individual, firm and corporation, in order that we may determine the true status of one's holdings."

It would seem that the latter part of Section 6 of Chapter 6208, Laws of 1911, answers your first question. It reads as follows:

"The contractor shall also enter into a good and sufficient bond with the board of county commissioners for the faithful execution of said contract; the amount of said bond to be fixed by the board of county commissioners and the sufficiency of said bond to be likewise approved by said board."

Referring to the second question as to whether the board of county commissioners, sitting as a board of equalization, would be authorized to demand books and records of individuals, firms or corporations, in order to determine the true status of one's property, it would appear that we have no statute that authorizes this course.

It will be observed, by referring to Sections 16 and 17 of Chapter 5596, Laws of 1907, that it is made the duty of the tax assessor to procure this information upon the oath of the property owner and that the valuation of any item of property, real or personal, fixed by the taxpayer shall in no case prevent the assessor from determining its true value, and, if he shall ascertain and have reason to believe that the valuation of any item is too small, he shall increase same to its true value and that if any taxpayer feels aggrieved at the valuation placed upon any item of property by the assessor he shall complain to the county commissioners at their meeting for equalization. In other words, the tax assessor is authorized to place the property above the valuation fixed by the owner, and, if it is too high, then the burden would be thrown upon the property owner to produce books and papers and make a showing that it was assessed too high.

This is a question that requires investigation to answer it properly and it cannot be done without knowing all the facts in the case, but I hope that the above may give you enough information to help you to arrive at a proper solution of the matter.

Yours very truly,

T. F. WEST,

Attorney General.

WITNESSES—NON-RESIDENT.

Tallahassee, Fla., April 28, 1917.

My dear Sir:

I have yours of the 25th instant inquiring if there is any way to compel the county to pay the cost of transportation of a material witness who is out of the State.

The process of the courts of Florida cannot extend beyond the territorial limits of the State, and I know of no way whereby a non-resident can be compelled to attend as a witness in a court of this State. Unless a party is legally served with subpoena and appears as a witness, the cost of his attendance cannot be taxed against the county in case of insolvency of the defendant.

The Attorney General is not authorized to officially advise in a case of this kind and, therefore, what is said in this letter cannot be regarded as an official expression from this office.

Yours very truly,

T. F. WEST,

Attorney General.

MUNICIPAL CORPORATIONS, TERMINATION OF.

Tallahassee, Fla., May 2, 1917.

Dear Sir:

Your letter of April 28th has been received and contents carefully noted.

Replying thereto I beg to advise that there are only two methods under our laws for terminating the existence of a municipal corporation, either by proceedings to surrender the franchise under Sections 1102, 1103 and 1104, of the General Statutes, or by act of the legislature abolishing the municipality. When neither of these is done the municipality continues as a corporate entity although in fact it may have become dormant or inactive. Therefore, the town of Longwood will not have to be reincorporated.

Section 1075 of the General Statutes provides for the extension of the territorial limits of a municipality and that method may be followed.

As an alternative and as a means of simplifying the situation, would it not be best for you to have your representatives in the legislature pass a special act abolishing the old and creating a new corporation with the territorial limits desired?

The Attorney General is not authorized to officially advise in matters of this kind and, therefore, what is said in this letter cannot be regarded as an official expression from this office.

Yours very truly,

T. F. WEST,

Attorney General.

WITNESSES, PAYMENT OF PER DIEM.

Tallahassee, Fla., May 9, 1917.

Dear Sir:

Replying to your inquiry of May 5th, I beg to advise, first, that by Section 1512 of the General Statutes as amended in 1915 the per diem of witnesses is fixed at \$1 instead of \$3.

Under the provisions of Article XVI, Section 9, of the Constitution and Chapter 5131, of the Laws of Florida, approved June 2, 1903, and under the authority of the case of DeSoto County Commissioners v. Howell, 40 So. 193, it is my opinion that the per diem and mileage of witnesses, both for the State and the defendant, in a case before a committing magistrate where the defendant is discharged, should be paid by the county subject to the restrictions and regulations imposed by law. If the defendant who is discharged has paid his witnesses the per diem and mileage allowed them by law, he can recover the same from the county. I think it necessarily follows

that if he has not paid them, these witnesses, who are clearly entitled to their fees, must be paid by the county.

There shall not be more than two witnesses summoned and paid to prove the same fact. Chapter 5131, approved June 2, 1903.

No person who appears voluntarily as a witness shall be paid unless an indictment or information is brought. Section 3934, General Statutes.

The county commissioners have the right to reject all or any portion of any account which is not a valid claim against the county and shall allow and pay the same only when it is just, correct and reasonable, and no constructive mileage or illegal or unnecessary item or charge in any frivolous case shall be allowed. Section 972, General Statutes.

In the case of DeSoto County Commissioners v. Howell, cited above, it is said (p. 194) :

"A general judgment of a trial court fixing liability upon a county for the costs when the defendant is discharged or acquitted is not a finality upon the question of such costs; but they are to be investigated, audited and allowed by the county commissioners in the exercise of a legal and not arbitrary discretion, and the liability of a county does not become fixed as to the items and amount to be paid until the commissioners have determined them to be legal or they have been established by suit."

The Attorney General is not authorized to officially advise in matters of this kind and, therefore, what is said in this letter cannot be regarded as an official expression from this office.

Yours very truly,

T. F. WEST,

Attorney General.

COUNTY COMMISSIONERS MAY RAISE VALUATIONS WHEN SITTING AS BOARD OF EQUALIZERS.

Tallahassee, Fla., May 24, 1917.

Dear Sir:

Yours of the 22nd instant has been received and noted.

In a case such as you mention, where the county commissioners know that property assessed at \$20,000 is actually worth \$100,000, they would, in my opinion, have the power, at the meeting held by them for the purpose of reducing and equalizing the assessment, to raise the valuation placed upon such property by the tax assessor of the county. When this is done it will be necessary, of course, for the board, as in all other cases where valuations are raised by them, to give notice of same so that the property owner would have an opportunity to be heard upon the question.

Yours very truly,

T. F. WEST,
Attorney General.

COUNTY OFFICERS—WHO ARE.

Tallahassee, Fla., May 28, 1917.

Dear Sir:

My attention has been called to the action of the House of Representatives asking for an expression from this office upon the question of what officers are "county officials" in this State within the meaning of that term as it is used in Senate Bill Number 223 now pending in the House.

It appears that this question was suggested by certain amendments which were offered to this act, proposing to refer specifically to county solicitors, prosecuting attorneys for county courts, clerks of civil courts of record and clerks of criminal courts of record, and, therefore, the question presented is whether or not these officers are county officials.

This question was answered with reference to county solicitors by the Supreme Court of this State in the case of *State ex rel Murphy v. Barnes*, 24 Fla. 29, wherein it was held that solicitors for criminal courts of record are county officers.

In an advisory opinion to the Governor, reported in 13 Fla. 687, county officers are defined as those whose general authority and jurisdiction are confined within the limits of the county in which they are appointed, who are appointed in and for a particular county and whose duties concern more especially the people of that county.

It having been decided that county solicitors are county officers, it would seem to follow necessarily that prosecuting attorneys for county courts and clerks of courts in the several counties of this State are also county officials.

Respectfully,

T. F. WEST,
Attorney General.

SHERIFFS, WHEN MILEAGE NOT ALLOWED.

Tallahassee, Fla., May 30, 1917.

My Dear Sir:

Yours of the 28th instant has been received.

It is my understanding that a sheriff is not entitled

to compensation for the mileage traveled for the purpose of making arrests in cases where the persons for whom he has warrants are not taken into custody.

With kind personal regards,

Yours very truly,

T. F. WEST,
Attorney General.

JUSTICES OF THE PEACE, JURISDICTION.

Tallahassee, Fla., June 12, 1917.

My dear Sir:

I have your communication of June 8th, relative to the jurisdiction of justices of the peace in counties where county courts exist, and in reply beg to advise that I am of the opinion that Section 22, of Article V, of the Constitution of this State as amended at the general election in 1896 fixes the jurisdiction of all justices of the peace in this State at \$100 in civil matters.

You will observe that Sections 2073 and 2074 of the General Statutes of Florida, in determining the jurisdiction of justices of the peace in this State, provide that in counties where there is no county court such jurisdiction in civil matters shall not exceed \$100 but in counties where county courts have been established this jurisdiction is fixed at \$50. These statutes, however, were enacted prior to the provision of the Constitution, as above referred to, and would, therefore, be modified and superseded by such provision.

The Attorney General is not authorized to officially advise in matters of this kind. This is merely to assist you in arriving at a proper conclusion in the premises, which I shall take pleasure in doing at any time.

Yours very truly,

T. F. WEST,
Attorney General.

BOARDS OF PUBLIC INSTRUCTION MAY BORROW
MONEY.

Tallahassee, Fla., June 20, 1917.

My dear Sir:

I have your communication of June 16th, relative to the authority of boards of public instruction in this State to borrow money, and in reply beg to advise that such authority is now limited as provided in Chapter 6828, Acts of 1915. This act in effect provides that any board of public instruction in this State may borrow money to discharge any and all obligations existing prior to July 1, A. D. 1915, and, in addition to discharging such obligations, the act carries the further provision that any board of public instruction may borrow for current expenses in each year a sum not to exceed 80 per cent of the amount estimated by them to be required for the maintenance of the necessary common schools of their county for the next ensuing scholastic year, which must be based on the estimate as made by the board as required in sub-section 14, of Section 347, of the General Statutes of Florida.

The Attorney General is not authorized to officially advise in matters of this kind. This is merely to assist in arriving at a proper conclusion in the premises, which I shall take pleasure in doing at any time.

Yours very truly,

T. F. WEST,
Attorney General.

HABEAS CORPUS PROCEEDINGS, PAYMENT OF
COSTS.

Tallahassee, Fla., June 20, 1917.

Dear Sir:

Your letter of the 5th instant duly received, as follows:

"As attorney for the Board of County Commissioners of Columbia County and at the Commissioners' request I write to get your opinion on the following:

"Three members of the board were taken to Tallahassee in custody of the Sheriff to appear before the Supreme Court in Habeas Corpus Proceedings, where they were released from custody and the sentence imposed by the Circuit Judge for contempt of Court vacated.

"The Sheriff now brings in a bill for mileage for himself and three prisoners for ten cents a mile each way.

"We would like to know whether the sheriff should charge mileage for more than one prisoner and actual railroad fare and expenses for the others, or whether he should have mileage for all three and himself to Tallahassee and back, or whether there should be any mileage charged for the Commissioners returning, they having been discharged in Tallahassee."

Replying to above will state that Section 2254 of the General Statutes covers the matter as to cost in habeas corpus cases. It provides that the court, justice or judge before whom the prisoner is brought shall inquire into the cause of his imprisonment and shall either discharge him or remand him to custody and shall "either award against the prisoner the charge of his transportation, not exceeding 15 cents per mile, and the costs of the proceedings, or shall award the costs in his favor, or shall award no costs or charges against either party, as shall seem right."

By referring to the order discharging the petitioners in this case, I find that the Supreme Court adjudged that the County of Columbia should pay the cost in the Supreme Court, which amounts to \$12. However, the order did not mention the Sheriff's cost nor, in fact, any other cost in the proceedings. In other words, the Supreme Court awarded no costs or charges against either party except as above stated.

County Commissioners, as you know, are clothed with a wide discretion in auditing and approving bills of costs against the county. This is especially emphasized by Sections 4064, 4066 and 792 of the General Statutes. They in substance provide that the Board of County Commissioners before approving any bill against the county shall ascertain that no charge for anything except "actual and necessary services or actual and necessary expenses which may be chargeable against the state or county is contained therein."

In this connection will state that it is very unusual for petitioners in habeas corpus cases to be physically produced before the Supreme Court, as the same is waivable without objections. In other words, as a matter of practice, it is unnecessary for them to be present, and this would seem to apply especially to these county commissioners.

It will also be observed that Section 1737 of the General Statutes, among other things, provides that no fees shall be charged in any case or for any official service performed or claimed to be performed by any officer within the state "unless said fees be expressly authorized and their amount be specified by law."

It does not appear that we have a statute which expressly provides for the fees of the sheriff as shown in this case. As to whether or not this fee as stated in your letter is a legal and necessary charge against Columbia County rests largely within the discretion of the county commissioners of your county to determine, keeping in

view the above statutes and the service performed by the sheriff. However, it would seem reasonable at least for the county to pay the actual, necessary expenses incurred by the sheriff and the three commissioners to and from Tallahassee.

I note that you suggest that these men were discharged in Tallahassee, but the order of the court shows that they were not legally discharged from custody until some days after their return to Columbia County.

You are no doubt aware that this office has no authority to officially advise in matters of this kind. However, in several instances where it was thought suggestions would aid in reaching an equitable adjustment of matters, we have directed attention to certain applicable provisions of our statutes.

Hoping this may assist you in arriving at a proper conclusion of the matter, I remain,

Yours very truly,

T. F. WEST,

Attorney General.

INSPECTORS OF MARKS AND BRANDS AND CON-
STABLES OFFICERS.

Tallahassee, Fla., June 29, 1917.

Gentlemen:

I have your communication of June 23d and in reply beg to advise that inspectors of marks and brands in this State are appointed by the Governor on recommendation of the board of county commissioners and are commissioned for four years and have prescribed duties and compensations.

Constables are elected by the people and are commissioned and have certain duties and compensations prescribed.

It therefore appears that both positions are offices and could not be held by one and the same person at the same time, as Section 15, of Article XVI, of the Constitution would thereby be violated.

With kind personal regards,

Yours very truly,

T. F. WEST,

Attorney General.

JUSTICES OF THE PEACE, WHEN MAY ISSUE
WARRANTS FOR PERSON IN DISTRICT.

Tallahassee, Fla., July 5, 1917.

Dear Sir:

Your letter was duly received some time ago but under the pressure of official business answer has been delayed until now.

It seems that you desire to know if a justice of the peace can issue a warrant for a person in another justice's district where the latter justice is not qualified or is unable to try the case.

Replying to above will advise that Section 3900 of the General Statutes seems to cover your case. It is there provided that "In case a justice of the peace be disqualified or unable from any cause to try any criminal case, the same may be tried before any other justice of the peace of the county, or before the county judge."

The above would necessarily carry with it the authority to issue warrants and other process.

Yours very truly,

T. F. WEST,

Attorney General.

CONSTABLES JURISDICTION.

Tallahassee, Fla., July 13, 1917.

Dear Sir:

Your letter of the 11th instant received asking information as to whether or not a constable has authority to make an arrest out of his district without first procuring a warrant from a justice of the peace or county judge.

Replying to above will state that under Sections 1687 and 3902 of the General Statutes the jurisdiction of a constable extends over the entire county under the restrictions there mentioned as to fees, etc. I would therefore assume that you would have authority to make arrests without warrants (for such offenses as are enumerated in the statutes) outside the district for which you were elected or commissioned.

The Attorney General has no authority to officially advise in matters of this kind and this is merely to assist you in arriving at a proper conclusion in the premises.

Yours very truly,

T. F. WEST,

Attorney General.

COUNTY JUDGE—SUPERVISION OF DELINQUENT CHILDREN.

Tallahassee, Fla., July 19, 1917.

My Dear Sir:

Your communication of the 17th instant asking, in effect, for my opinion as to whether a "County Judge has full power and authority to deal with dependent and delinquent children," has been received.

Replying to your inquiry, I beg to advise that it is my opinion that Section 1208b, Compiled Laws of 1914, places the duty upon the County Judge to exercise supervision or control of dependent and delinquent children, and that Sections 1208d, 1208j and 1208l provide the manner in which such duty may be performed.

The Attorney General is not authorized to officially advise in matters of this kind and therefore what is said in this letter cannot be regarded as an official expression from this office.

Yours very truly,

T. F. WEST,

Attorney General.

TAX EXEMPTIONS UNDER CONSTITUTION.

Tallahassee, Fla., July 21, 1917.

My Dear Sir:

Yours of the 18th instant has been received.

I note your inquiry as follows:

"Section 431 paragraph seven revised statutes reads as follows:

"There shall be exempt from taxation property to the value of two hundred dollars to every widow dependent upon her own exertions, and to every person who has lost a limb or been disabled in war or by misfortune to that extent that it disqualified him from the performance of manual labor."

"Please advise me at your earliest convenience if this law applies to persons residing in other States and owning property in this State."

The constitutional provision on this subject is Section 9 of Article IX of the Constitution as amended at the general election of 1916 and reads as follows:

"Section 9. There shall be exempt from taxation property to the value of five hundred dollars to every widow that has a family dependent on her for support, and to every person who is a bona fide resident of the State and has lost a limb or been disabled in war or by misfortune."

The latest statute on this subject is paragraph 7, of Section 4, of Chapter 5596 of the Acts of 1907, reading as follows:

"Seventh, There shall be exempt from taxation property to the value of two hundred dollars *in the county in which she resides*, to every widow dependent upon her own exertions, and to every person who has lost a limb or been disabled in war or by misfortune, and dependent upon their own exertions to that extent that disqualifies him or her from the performance of manual labor."

The constitutional provision increasing the amount of the exemption to \$500 is of course controlling as to the amount, but the statute quoted above in providing that the exemption should be given "in the county in which she resides" shows conclusively that the legislature understood that the exemption would be given to residents only of the State, and in my opinion you would be warranted in allowing this exemption to residents of the State only.

The Attorney General, as you know, is not authorized to officially advise county officers and, therefore, this letter cannot be regarded as an official expression from this office.

Yours very truly,

T. F. WEST,

Attorney General.

SCHOOLS, ELIGIBILITY OF WOMEN TO BE
TRUSTEES.

Tallahassee, Fla., August 3, 1917.

Dear Madam:

Your letter of August 1st, making inquiry as to whether women are eligible for the office of School Trustee in this State, has been received.

Replying to your inquiry, I beg to advise that the question of the eligibility of a woman to hold the office of School Trustees seems not to have been passed upon by the courts of this State. However, an advisory opinion, of our Supreme Court, to the Governor, which is reported in the 62 Fla. Sup. Ct. Report, page 1, also in 57 Sou. Reporter, page 351, upon the question of the eligibility of a woman to hold the office of County Treasurer, throws some light upon the general question of the eligibility of women to hold office. In this opinion, among other things, the Court said:

"There is no absolute connection between voters and officers, by which the qualifications for the latter should necessarily be determined by those for the former. Each is regulated to its own end; the former always by special provisions, the latter sometimes not at all, except, as in this state, the more important political and judicial places. So that, as to all other officers, the people, in the absence of other requirements, are left to their own discretion, limited only by a common understanding, equivalent to law, that prohibits electing to office any person who is not in some wise a member of the body politic."

I am of the opinion that an adult woman, who is a citizen and resident of this State, and who has not become disqualified under the Laws of the State, is eligible to hold the office of School Trustee.

The Attorney General has no authority to officially advise in matters of this kind, and this is merely to assist you in arriving at a proper conclusion in the premises.

Very respectfully,

T. F. WEST,

Attorney General.

COSTS IN JUSTICE OF PEACE OF COUNTY
JUDGES' COURTS.

Tallahassee, Fla., August 18th, 1917.

My Dear Sir:

Your letter of the 12th instant relative to certain matters pertaining to costs which have arisen in your court has been received and noted.

Chapter 5651, Acts of 1907, Laws of Florida, which amends Section 4072, General Statutes 1906, provides as follows:

"In all cases of Justices of the Peace and County Judges in this state shall require payment in advance or security for costs of process service of the same and of examination unless the party applying for a warrant shall make an affidavit of insolvency and of substantial injury, to person or property, by him suffered, in which case process shall issue without payment of costs."

This Section of the law provides for Justices of the Peace and County Judges arranging for the payment of their costs in advance, and its provisions should be followed.

In cases where the crime is of a public nature, such as the violation of the local option law, the section above

quoted is not applicable, but it has reference to those classes of crimes where the complaining witness has suffered special damage in his own person or private property. See this case of *Simmons et al. vs. State ex rel. P. W. Tew*, 71 Fla. 340.

Boards of County Commissioners have considerable discretion in dealing with matters of this kind; the Attorney General has no authority to supervise their action, in such matters, and it would hardly be proper for me to say that they are in error in any given case.

Yours very truly,

T. F. WEST,

Attorney General.

OFFICES—JUSTICES OF PEACE, POSTMASTER.

Tallahassee, Fla., September 5th, 1917.

My Dear Sir:

Your letter of the 3rd instant addressed to Honorable Sidney J. Catts, Governor, has been transmitted to this office for attention and reply.

I understand your inquiry to be as to whether a person may be a Justice of the Peace and Postmaster at the same time under the Laws of Florida.

In reply I beg to advise that it appears that the subject matter of your inquiry is covered by Section 15 of Article XVI of the Constitution of the State of Florida, which reads as follows:

"No person holding or exercising the functions of any office under any foreign government, under the government of the United States, or any other state shall hold any office of honor or profit under the government of this state; and no person shall hold, or perform the func-

tions of, more than one office under the government of this state at the same time."

In view of the provisions of the Constitution above quoted, and in view of the fact that justices of the peace are officers under the laws of this state, and that postmasters are officers appointed by the postoffice department of the United States, it appears that the same person could not hold or exercise the duties of such offices at one and the same time.

The Attorney General is not authorized to officially advise in matters of this kind, and, therefore, you cannot consider this an official expression from this office. This is merely to assist you in arriving at a proper conclusion in the premises, which I shall take pleasure in doing at any time.

Yours Very truly,
VAN C. SWEARINGEN,
Attorney General.

ROAD DUTY EXEMPTIONS.

Tallahassee, Fla., September 24, 1917.

Dear Sir:

Your letter of the 17th instant, asking if a man who owns no real estate is subject to road duty in this State has been received.

In reply I beg to advise that the only exemptions from road duty in this State of which I am aware are defined in Chapter 6880, Acts of 1915, section 1 of which reads as follows:

"Section 1. That Section Eleven of Chapter 6537, Acts of 1913, be and the same is hereby amended to read as follows:

"Section 11. All persons who shall have lost a limb, or shall be incapacitated by physical disability from earning a livelihood by ordinary manual labor, which disability shall be of such character as to disable them at all times from so earning a livelihood by manual labor, persons of unsound mind and ministers in charge of a church, and persons who have performed their full proportion of road work in any other county or district or road subdivision and persons who shall have been previously exempted by reason of having reached the age of forty-five years, and residents of an incorporated city or town, and persons paying a general road, or sub-road or bridge district tax on real estate or personal property, shall be exempt from road duty under the provisions of this act."

All persons included under or covered by the law as above quoted would be exempt from road duty in this State unless you have some local or special law applying to your county that would in some way alter these exemptions. I am not aware of any such local law.

The Attorney General is not authorized to officially advise in matters of this kind. This is merely to assist you in arriving at a proper conclusion in the premises, which I shall take pleasure in doing at any time.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SCHOOLS, USE OF FUNDS.

Tallahassee, Fla., October 19th, 1917.

Dear Sir:

I am in receipt of your letter of the 15th inst. as follows:

"A Junior High School is a school carrying ten grades.
A Senior High School is a school carrying twelve grades.

Can the trustees of a Junior High School appropriate the funds of a Special Tax School District towards paying the board or transportation of pupils who have completed the course in the Junior High School and desire to attend a Senior High School in another Special Tax School District?"

Replying to your inquiry, I beg to advise that I do not think the trustees of a Junior High School are authorized to pay the board or transportation of pupils who have completed the course in the Junior High School, to attend a Senior High School. See Sections 409 and 413, Compiled Laws, 1914.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

COSTS TO BE TAXED AGAINST DEFENDANT.

Tallahassee, Fla., November 1, 1917.

Dear Sir:

I am in receipt of your letter of the 29th ult., as follows:

"The Board of County Commissioners of Bay County recently employed an attorney under the act of 1917 to prosecute cases in the County Judge's Court. Said attorney to be paid as follows:

'\$4.00 per conviction, total amount paid said attorney not to exceed \$600.00 per year.'

Please advise if this \$4.00 attorney fee can be taxed against the defendant on conviction.

Also please advise if the cost of feed of a prisoner in jail can be taxed against him, that is the cost of feed from the time of incarceration to the date of conviction."

Replying to your inquiry, I beg to advise that I do not think it was the intention of the legislature, under Chapter 7331, Laws of Florida, Acts of 1917, to authorize the Board of County Commissioners, where they employ an attorney under the provisions thereof to provide for such attorney's compensation by having it taxed as costs against defendants who may be convicted in the County Judge's Court. The latter part of Section 2 says that the salary of such attorney shall be payable monthly out of the Fine and Forfeiture Fund of the County.

I do not think that the cost of feeding a prisoner while in jail should be taxed against him as costs.

The Attorney General is not authorized to officially advise in matters of this kind, therefore you understand that this cannot be considered as an official expression from this office.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

ROADS, TAXES, SPECIAL TAX DISTRICTS.

Tallahassee, Fla., October 31st, 1917.

Dear Sir:

Your letter of the 29th inst., to Judge T. F. West in reference to the contents of a former communication of this office to the Governor relative to the application of road funds in counties having Special Tax Road Districts, has been referred to me for reply.

The question asked by one of your County Commissioners was, whether or not *all road taxes* collected in a special road and bridge district have to be spent in that district for the repair and upkeep of the roads and bridges within that district.

These matters are usually answered hurriedly—not being duties required of the office, but a courtesy which has usually been extended when time would permit.

Our statement was, that Section 4 of Chapter 6879, Laws of 1915, provided that all special taxes assessed and collected upon property within the said road and bridge district should be applied solely and exclusively to the roads and bridges in this special district. Of course, the above has reference only to special road taxes. Then I made the further statement that: "The above does not affect, in any way, the levy and collection of the *general county road tax* over the county, which is to be applied by County Commissioners over the entire county for the repair and upkeep of all of the roads, including any that may be in the special road district.

I do not see any material difference in the meaning of the quoted language and that you suggest in your letter of the 29th. It seems that I did not make myself clear. My view is, that all special district taxes must, of course, be applied solely to the roads and bridges in the special district, or, to the retirement of bonds, when bonds are issued.

The fact that a special road tax district is created does not prevent the levy and collection of a general county road tax on property within the district, neither does it prevent the district receiving its due proportion of the general county road fund. It seems that the special tax district fund was only intended to supplement the general county road fund, which should be applied to roads in the district as though the district had not been created. In fact, the statute says the district shall be entitled to receive its "due proportion" of the county tax levied for general road purposes. As to what is to be considered a "due proportion," that is purely a matter of equitable construction to be applied to the circumstances in each case.

You are, of course, aware, as suggested above, that this

office has no authority to officially advise any officers or persons except those named in the Constitution and statutes of this State, and suggestions have only been made when we thought it would aid persons interested in reaching a proper conclusion as to their duties.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

STATE BOARD OF HEALTH, VACCINATION, ETC.

Tallahassee, Fla., November 14, 1917.

Dear Doctor:

I am in receipt of your letter of the 6th instant, and note what you have to say therein.

As I understand your inquiry, you desire to know whether the State Board of Health has the authority to adopt rules and regulations providing for compulsory vaccination, and whether or not such Board has the power to debar children from the Public Schools of the State.

Replying to your inquiry I beg to advise that Section 2, of Article XV, of the Constitution of Florida provides as follows:

"The State Board of Health shall have supervision of all matters relating to public health, with such duties, powers and responsibilities as may be prescribed by law."

Section 1122 of the General Statutes of Florida, 1906, provides as follows:

"It shall be the duty of the State Board of Health to formulate such rules and regulations for the preservation of the public health as, in their judgment, they may

deem necessary, and to meet upon the first Monday in May of each year to formulate such additional rules and regulations for the preservation of the public health, as their experience may suggest, and they shall have the same published in such place and in such manner as they may deem best to give greatest publicity to the same."

Section 1 and 2, of Chapter 6829, Laws of Florida, Acts of 1915, provide as follows:

"Sec. 1. The State Board of Health shall have supervision over all matters pertaining to the medical inspection of school children in Florida, with such duties and powers as are prescribed by law pertaining to Public Health, and all school children shall be examined as to their physical condition at least once during each school year.

"Sec. 2. It shall be the duty of the State Board of Health, as soon after the passage of this Act as practicable, to formulate and adopt such rules and regulations as will be necessary to provide for thorough and uniform medical inspection of school children in Florida, as provided in Section 1 of this Act."

From the above quoted provisions of law it appears that the State Board of Health has the power to make such rules and regulations, as, in their judgment, they deem necessary for the preservation of the public health.

Whether or not the State Board of Health has the authority to make rules and regulations excluding children who have not been vaccinated, from the public schools of our State has never been passed upon by the courts of this State. In some States it has been held that a State Board of Health cannot, under power to make regulations for the prevention of the introduction of smallpox into, and the suppression thereof in, the State, when smallpox is not prevalent in the community, require vaccination of children as a condition to their admission to the public schools.

State ex rel. Adams v. Burdge,
 95 Wis. 390, 37 L. R. A. 157,
 Am. St. Rep. 123 70 N. W. 347.
 Patts v. Breen,
 167 Ill. 67, 39 L. R. A. 152.

Unless such power is clearly conferred, local bodies may not require vaccination in the absence of smallpox, or an apprehension of an immediate outbreak thereof.

Note 17 L. R. A. (N. S.) p. 710.

The case of *People ex rel. Jenkins v. Board of Education*, 17 L. R. A. (N. S.) 709, and notes thereto is instructive upon this subject and seems to hold to the view that vaccination cannot be made a condition precedent to the admission of children to the public schools, unless expressly made so by Statute.

In view of the above and other decisions of the courts upon this subject I doubt very much the authority of the State Board of Health to adopt rules and regulations requiring children to be vaccinated before they may attend the public schools of this State.

The Attorney General is not authorized to officially advise in matters of this kind, therefore this letter cannot be considered as an official expression from this office.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

BONDS—DISPOSITION OF PROCEEDS.

Tallahassee, Fla., December 7th, 1917.

Dear Sir:

I am in receipt of your letter of the 20th of November enclosing certified copy of call for bond election in Hamilton County, and note your request for my opinion as to

whether or not the Commissioners or anyone else will have the right to divert any of this money to any other road than that road upon which the call says it shall be expended.

Replying to your inquiry, I beg to advise that Section 796 of the General Statutes of Florida provides as follows:

"796. DISPOSITION OF PROCEEDS.—The proceeds of all bonds sold for money shall be paid over to the county trustees, to be distributed by them for the purposes for which such bonds were sold, and for no other purpose."

From this provision of law it appears that the proceeds from the sale of county bonds should be used for the purpose for which such bonds were sold.

Please pardon my delay in answering your communication, as I have been absent from the city on official business for ten days and have just been able to give the matter my attention.

I am returning call to you herewith.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

COUNTY COMMISSIONERS NOT AUTHORIZED TO
PAY EXPENSES OF DELEGATES TO MEETING
OF STATE ROAD DEPARTMENT.

Tallahassee, Fla., December 12, 1917.

Dear Sir:

I am in receipt of your letter of the 10th instant asking to be advised as to whether the County Commissioners are authorized to appropriate money of the county to pay

expenses of delegates to a meeting of the State Road Department.

Replying to your inquiry, I beg to advise that I do not think the law authorizes the expenditure of county funds for such purpose as above mentioned.

You understand, of course, that the Attorney General is not authorized to give opinions on matters of this kind, therefore, the above cannot be considered as an official expression from this office.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

TAX COLLECTOR NOT TO BE PAID FROM SCHOOL FUNDS.

Tallahassee, Fla., January 16, 1918.

Dear Sir:

Your letter of the 12th instant duly received making inquiry of this office as to whether or not the commissions of the County Tax Collector for the collection of the taxes of Special Tax School Districts should be paid from county funds or from the funds collected in the Tax School Districts.

Replying to the above, will advise that Seciton 15 of Article 12, of the Constitution of Florida, provides that the compensation of all county school officers shall be paid from the school funds of the respective counties.

It has been uniformly held by this office, and I concur in that view, that a Tax Collector is not a School Officer, and that his compensation should not be paid from the County School Funds. In my opinion, the same rule applies as to the Special Tax School District Funds.

This, of course, is not to be considered as an official opinion from this office, as the Attorney General is not authorized to officially advise county officers in matters of this kind.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION, SALARY.

Tallahassee, Fla., March 18, 1918.

Dear Sir:

I am in receipt of your communication of the 16th instant with statement enclosed showing amount of receipts of your county for school purposes, and note that you desire to know whether you should be reimbursed to the amount of \$25.00 per month for the past two or more years to make your salary be in accordance with Chapter 5658, Laws of Florida, Acts of 1907.

Replying to your communication, I beg to advise that under Chapter 5658, Acts of 1907, it is provided that in counties where the receipts for school purposes annually are more than \$70,000.00 and less than \$100,000.00 the salary shall be not less than \$150.00 per month. I will say, therefore, that under the circumstances your salary as County Superintendent of Lee County should be not less than \$150.00 per month for the year in which the receipts for school purposes annually amounted to more than \$70,000.00 and less than \$100,000.00, the exact amount to be fixed by the Board of Public Instruction under Section 347 of the General Statutes.

I should think if during these years where the receipts have been more than \$70,000.00 a year you have

been receiving only \$125.00 per month that you would be entitled to an amount sufficient to make your salary for such years correspond with the amount provided for in the statute.

Of course, you understand the Attorney General is not authorized to give official opinions to county officers and therefore this communication should not be considered as an official expression from this office.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SPECIAL TAX SCHOOL DISTRICT, BOND ISSUES.

Tallahassee, Fla., March 25, 1918.

Dear Sir:

I have your letter of the 23d instant in which you ask the following question:

"First Tax School District voted hundred thousand dollars bonds for building and equipping school in the district and it carried with a great majority. Since contracting for buildings, etc., we found that the assessment of five mills did not take care of interest and sinking fund and we have been compelled to advance several thousand dollars from the general school funds to meet obligations contracted for under the bond issue. The questions are: Should the Tax Assessor not raise assessment in the district to take care of bond issue, and should the first district not be compelled to pay back to general funds what has been advanced for contracts under bond issue. Or should the school in district be run accordingly to the district's income?"

The statute on this subject is Section 15, of Chapter

6542, Acts of 1913, as amended by Section 2, of Chapter 6967, Acts of 1915, Laws of Florida, which reads as follows:

"Whenever any special school tax district bonds shall have been issued in pursuance of this Act, it shall be the duty of the Board of County Commissioners of said county to levy annually a tax upon all real and personal property, railroad, telegraph and telephone line, owned or situated within said Special School Tax District, not to exceed five mills on the dollar in any one year sufficient to raise and pay the interest on said Special Tax School District bonds and sufficient to create the sinking fund for the payment of principal of said bonds at maturity of same, which sinking fund shall be provided for by resolution of the County Board of Public Instruction before the issuing of any bonds. All Special Tax School District taxes for the payment of interest and to create a sinking fund for the retirement of said bonds shall be assessed, equalized and collected upon taxable property in the Special Tax School District by the same officers and in the same manner as is provided by law for the assessment, equalization and collection of other county taxes. And the Board of County Commissioners shall levy and have collected from all taxable property within the Special Tax School District a special tax herein provided for, and until all bonds issued in pursuance hereof shall be paid and retired, and all money now in the hands of any County Treasurer of this State which has been collected on account of the interest and sinking fund for any Special Tax School District, or which may hereafter be turned over to any County Treasurer for the purposes mentioned above shall be immediately turned over to the bank selected as said depository for that district's funds by the County Treasurer upon his being so notified by the Board of Public Instruction that the said depository has been selected and has qualified as herein provided, and provided that after

the first day of January, A. D. 1917, it shall be the duty of the County Tax Collector to turn over to the said depository as designated by the Board of Public Instruction all money collected for the Interest and Sinking Fund of all bonds issued and outstanding against any such Special School Tax District.

"Second. The County Board of Public Instruction shall have power at all times to invest the Sinking Fund collected for the retirement of any bonds of any district in the bonds of another Special School Tax District of the same county; Provided, said bonds shall be purchased at par, and the board shall have further right to invest the Sinking Fund of any district in any municipal or county bonds of the county under its jurisdiction, provided that the said bonds shall be of such date and maturity that they will mature on or before the date of the maturity of the district's bonds, with whose Sinking Fund they have been purchased, and provided further, that it shall be the duty of the County Board of Public Instruction before investing the Sinking Fund as herein provided to secure the opinion of the Attorney General of the State of Florida, approving the legality and validity of the bonds to be so purchased, and no bonds shall ever be purchased by any board which have not been entirely and fully approved by the opinion of the Attorney General as herein provided. Provided, always, that the board shall have the right to keep the Sinking Fund on deposit earning the rate of interest agreed upon until such time as in their judgment they may be able to invest it in bonds to better advantage as herein provided for."

"Third. It shall be the duty of the Board of Public Instruction to prepare annually on or before the 30th day of June of each a year a separate report for each district having issued bonds, in which they shall state the amount of money received for said bonds, the amount of money expended from the proceeds, the amount on

hand, the amount of money collected for interest and sinking funds of said bonds, the amount expended, the amount invested and enumerating the kind and amount of securities held therefor, describing the same separately and giving such other information as may be necessary to fully explain the financial condition of the district, which report shall be published at length in a newspaper of general circulation of the district or the county in which the district is located."

You will note that the duties of the board of your County Commissioners are definitely set out in this Statute.

If the district referred to has issued bonds in such amount that the interest cannot be paid when the maximum millage allowed by law is levied, it is not a defect in the law. You have simply made a miscalculation of the ability of the district to pay, and it would be well, perhaps, to take up the matter with the owners of the bonds, if they have been sold, and try to work it out.

A special school tax district or any other political subdivision of the state is, as a practical matter, limited just as an individual is in the obligations which it should incur by its ability to pay, and the question of its ability to take care of an obligation should necessarily be considered before the obligation is incurred.

I do not know of any way by which the amount of income from taxes could be increased to cover this interest and sinking fund of this bond issue unless the assessment of the property in the district as to valuations was raised, but this could not arbitrarily be done under the law. I do not think the general school fund should be expended upon contracts made under the bond issue.

You will understand, of course, that the Attorney General is not authorized to advise in cases of this kind and while I necessarily reply to a great many inquires

from County Officers, such replies cannot be regarded as an official expression from this office.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

TAXATION, ASSESSMENT OF LAND SEPARATE
FROM BUILDINGS THEREON.

Tallahassee, Fla., March 28, 1918.

My dear Sir:

I am in receipt of your letter of the 27th instant which is in part as follows:

"Certain property having been leased to a ship-building corporation for three years and at the time the lease was made the property being vacant, and since certain improvements having been added in the nature of buildings and, etc., I am at a loss to know as to whether it is possible under the law to make a separate assessment for the buildings aside from the actual assessment on the real estate.

"I am informed that the party to the lease did not make any provision for the payment of the taxes and unless the real estate and buildings can be separately assessed this would work a hardship on the owners of the property.

"The lease in part reads as follows: 'All structures erected upon the leased premises shall remain the property of the lessee and may be removed at the expiration of the term.'"

Mr. Cooley in his work on Taxation, Vol. 1, page 633, lays down the following doctrine: "Where land is owned by one person and buildings thereon by another, the two

are to be separately assessed, and the assessment of the buildings as real estate is proper."

Section 439 of the General Statutes of Florida, 1906, defines real property as follows:

"Real property, for the purpose of taxation, shall be construed to include lands and all buildings, fixtures and other improvements thereon * * *."

From the statement contained in your letter regarding the lease of this property, it would appear that it was evidently the intention of the parties thereto that the buildings to be erected on said land should remain the property of the lessee and if such is the case then I think that it would be subject to assessment separate and apart from the property of the lessor.

Of course, you understand that the Attorney-General is not authorized to give official opinions to county officers, therefore what is here said cannot be considered as an official expression from this office.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

ROADS—SPECIAL TAX DISTRICTS, FUNDS TO BE
USED IN DISTRICTS.

Tallahassee, Fla., April 20, 1918.

Dear Sir:

I am in receipt of your communication of the 17th instant, and note that you desire to know whether the funds collected in a Special Tax Road District should be used by the County Commissioners in that district, or whether they may be used any where in the county.

Replying to your communication, I beg to advise that

funds raised in a Special Tax Road District by special taxation should be used within said district.

Of course, you understand that the Attorney General is not authorized to officially advise in matters of this kind, therefore this communication cannot be considered as an official expression from this office.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

BOND TRUSTEES—COMPENSATION.

Tallahassee, Fla., April 30, 1918.

Dear Sir:

I am in receipt of your letter of April 26th in which you ask me to advise you as to what effect Chapter 6932, Laws of Florida, Acts of 1915, has when construed in connection with Section 804, as the same relates to the question of the compensation of trustees of bond funds.

Replying to your inquiry, I beg to advise that this question, so far as I am advised, has not been before the courts of this state for determination, but inasmuch as Section 804 providing for the compensation to be allowed bond trustees was enacted prior to the time of the abolishing of the office of County Treasurer, it occurs to me that even though the latter office has been abolished, Section 804 would govern in the matter of fixing the compensation of bond trustees. If this be not the case then it would appear that there is no provision for paying them any compensation for their services. I assume that it was not the intention of the legislature to repeal the law providing for the compensation of the bond trustees, for if such had been its purpose there

would doubtless have been an independent law governing the subject.

Of course, you understand the Attorney General is not authorized to render official opinions in matters of this kind, therefore this communication cannot be considered as an official expression from this office.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

CONSTABLES, DUTIES OF.

Tallahassee, Fla., May 23, 1918.

Dear Sir:

I am in receipt of your letter of the 16th instant in which you ask several questions with reference to your duties.

Replying to your communication, I beg to advise that the Sheriff has jurisdiction over the entire County and, of course, he would have rights in any Justice of the Peace Court, but I should think that they should be used with due consideration for the Constable of the District where the Court is being held.

Section 1689, General Statutes of Florida, provides that Constables shall be paid the same fees as are allowed Sheriffs for like services.

I do not think that a Justice of the Peace should arbitrarily appoint a special constable to serve papers without some good reason, especially when the regular Constable is qualified and accessible to perform such duties.

You understand, of course, the Attorney General is not the legal advisor of County Officers, and what is here said cannot in any sense be considered as an official expression from this office.

Yours very truly,

VAN C. SWEARINGEN,
Attorney General.

SENTENCE, MAY BE MODIFIED.

Tallahassee, Fla., September 14, 1918.

My dear Mr. Alexander:

I have your letter of the 10th instant with reference to the question of whether a Judge could change or modify a sentence before the adjournment of the term of court at which such sentence was pronounced.

Replying to your communication I beg to advise that it is very generally held that a sentence may be modified during the term at which it was pronounced, but not after the adjournment of the term. The case of *Tillman vs. State*, 58 Fla. 115 holds to this view.

With kind personal regards and best wishes, I am

Yours sincerely,

VAN C. SWEARINGEN,

Attorney General.

PRIMARY ELECTIONS—TIME FOR FILING EXPENSE ACCOUNTS.

Tallahassee, Fla., May 28, 1918.

Dear Sir:

Your letter dated May 17th has just been received, and in reply beg to state that a candidate for a county office may qualify by filing his oath with the clerk of the Circuit Court not later than twenty days before the primary. Between the 30th and 25th day before the primary he must file his first campaign expense account with the clerk. Between the 12th and 8th day before the primary he must file his second expense account,

and not later than ten days after the primary he must file his third expense account. These expense accounts are governed by Section 19 of Chapter 6470, Laws of Florida, Acts of 1913. The oaths of the county candidates are governed by Section 26 of Chapter 6469, Laws of Florida, Acts of 1913.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

COUNTY COMMISSIONERS—NOMINATION AND ELECTION.

Tallahassee, Fla., February 14, 1918.

Dear Sir:

Replying to your letter of February 11th, beg to advise that County Commissioners are nominated in the primary by the vote of the district in which they live. They are elected in the general election by the voters of the county at large.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

FISH DEALER, LICENSE.

Tallahassee, Fla., February 18, 1918.

Dear Sir:

I have your letter of the 15th instant in which you desire to know whether or not you can peddle fish with-

out a license from the County or City, and note that you have a State license for selling fish at retail and that it is provided in said license that no City or County can impose any further license tax on fish.

Replying to your communication, I beg to advise that under the provisions of Section 14, of Chapter 6877, Laws of Florida, Acts of 1915, it is provided that no other tax than the State tax is required of fish dealers.

I am informed that the holding of the Commissioner of Agriculture on this matter is that where a person has a license to sell fish as a retail dealer that such license only authorizes him to have one place of business. That is to say, if he has a regular fish market that he could not in addition to the market peddle his fish also, but that if he has no such market and only wishes to peddle them that he may do so.

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

REGISTRATION OFFICERS, COMPENSATION.

Tallahassee, Fla., February 18, 1918.

Dear Sir:

Your letter of the 15th inst., duly received, in which you requested information as to the compensation allowable under the law to District Registration Officers, and calling attention to Chapter 5614, Laws of 1907, Section 14, of Chapter 6469, Laws of 1913, and Section 1, of Chapter 6874, Laws of 1915.

Replying to the above, my view is that that portion of Section 1, of Chapter 6874, Laws of 1915, which contains a stipulation as to the maximum limit of twenty-five cents for the registration of any voter is valid, even

though this provision was formerly contained in Section 14, of Chapter 6469, the same not being amended by direct reference in the Law of 1915. In any event, it is a rule that statutes should be treated as valid until declared invalid by a court having proper jurisdiction and authority. This would leave the County Commissioners to fix the compensation of Deputy Registration Officers with a limit not to exceed twenty-five cents for registration in any precinct. While this may work a hardship in a few precincts there are many instances in the State where the privilege of fixing compensation, where the precincts are very small, has been abused.

I hardly concur in your view that this provision in Section 9, as amended by Section 1, of the Acts of 1915, was primarily intended to apply only to precincts in counties having cities of over twenty-thousand population, but that it was intended to apply to all precincts throughout the State.

Hoping that the above will aid you in the matter, I beg to remain,

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

PRIMARY LAW—WHEN TWO CANDIDATES RECEIVE THE SAME NUMBER OF VOTES.

Tallahassee, Fla., February 23, 1918.

Dear Sir:

I am in receipt of your communication of the 20th instant with reference to the city election held in White Springs, and note the result as stated by you; and also your inquiry as to the provision of the Bryan Primary

Law with reference to the counting of first and second choice votes in cases where there are tie votes as set out in your communication.

Replying to your communication, I beg to advise that under the provisions of Section 50, of Chapter 6469, Laws of Florida (which is the Bryan Primary Law) it is provided that in cases as outlined in your letter where two persons who receive the highest number of votes, both receiving an equal number where counting both the first and second choice votes of said candidates, that the person who receives the highest number of first choice votes shall be declared the nominee.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

REGISTRATION OFFICER—FEES.

Tallahassee, Fla., March 15, 1918.

Dear Sir:

I am in receipt of your letter of the 13th instant, and in reply thereto beg to advise that Section 18 of Chapter 6469, Laws of 1913, provides for the compensation allowed supervisors of registration in furnishing copies of the names of voters. This section reads as follows: "The said registers shall be public records. Every citizen shall be allowed to examine the General County Register and each of the precinct registers, while they are in the custody of the Supervisor of Registration, but shall not be allowed to make copies or extracts therefrom. The Supervisor of Registration shall furnish copies of the names, occupations, and residences of any electors upon payment to him of reasonable compensation therefor, not exceeding the customary fees for copying pa-

pers in the office of the clerk of the Circuit Court, but shall not furnish in writing any other information contained in said registration books,"

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

POLL TAX.

Tallahassee, Fla., March 20, 1918.

Dear Sir:

I am in receipt of your letter of the 18th instant with reference to the question of when a man should pay his poll tax in order to be able to vote at the elections in this State.

Replying to your communication I beg to advise that poll tax should be paid on or before the second Saturday of the month immediately preceding the date of the election to entitle him to vote. This rule applies to general and special elections, and includes all poll or capitation taxes for the two years immediately preceding the year in which the election is held.

The Supreme Court decision to which you refer, *State ex rel. v. White*, 73 Fla. 426, is upon the question with reference to the meaning of the word "month" as used in the Statute, and is held to mean a calendar month, or that date and the corresponding date of the next preceding month by name. In this case an election was called to be held on March 20, 1917, and the Court said that the second Saturday of the month preceding the day of election was the third day of March. I would suggest that you obtain a copy of this decision and read it.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

BANKS—TAXATION.

Tallahassee, Fla., March 21, 1918.

Dear Sir:

I have your letter of the 20th inst. with reference to the matter of the assessment of the property of the First National Bank of Panama City, and note what you have to say with reference thereto.

Replying to your communication, I beg to advise that as I understand the law with reference to the assessment of property of National Banks the real estate is assessed against the bank and the shares of stock are assessed against the individual owners thereof.

In an opinion from this office dated October 10, 1914, to the State Tax Commission, former Attorney General West wrote as follows:

"In my opinion, the fact that a part of the capital stock or surplus of a National Bank may be invested in tax exemption bonds does not affect the value of the shares of stock of such banks for the purpose of taxation, and the value of the bonds should not be deducted from the amount of the capital and surplus of such banks when ascertaining the value of the shares of stock for the purpose of taxation.

Tarrant v. Bessemer National Bank, 61 So. 47."

I see no reason to interfere in any way with the above opinion, and believe that it correctly states the law.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SHERIFFS—FEES WHEN REQUIRED TO GO BEYOND STATE.

Tallahassee, Fla., March 30, 1918.

Dear Sir:

Your letter of the 28th instant has been received and noted.

My judgment is that the compensation of sheriffs of the counties of this state who go beyond the limits of the state for prisoners, as prescribed by Chapter 5407, Acts of 1905, is five cents per mile for the actual distance traveled from the county seat to the point of destination and return, and in addition thereto the actual and necessary expenses paid out for and on account of returning the prisoner.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SPECIAL TAX SCHOOL DISTRICT ELECTIONS, WHO MAY VOTE IN

Tallahassee, Fla., April 1, 1918.

Dear Sir:

I am in receipt of your letter of the 8th instant and in reply thereto I beg to advise that the language of the statute providing for those who may vote in a special school election provides for those voting who have paid the tax on personal and real property for the year next proceeding such election. I do not think that one who has not paid a tax as is prescribed for by this law is entitled to vote in such election.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

APPOINTMENTS TO ELECTIVE OFFICES.

Tallahassee, Fla., May 7, 1918.

My dear Sir:

I am in receipt of your letter of May 6th with reference to the question of whether you should enter the primary for nomination as County Judge, you having been appointed to fill the vacancy caused by the resignation of Judge S. J. Barco.

Replying to your letter I beg to advise that persons appointed to fill vacancies in elective offices only hold such office until the next ensuing general election, therefore I should think it would be necessary for you, in order to be the nominee of the Democratic party, to run in the coming primary.

Yours, very truly,

VAN C. SWEARINGEN,

Attorney General.

Replying to your inquiry I beg to advise that I do not think that the Primary Election Law requires that you should have the primary held in Tallahassee, Fla., May 10, 1918.

Dear Sir:

I am in receipt of your letter of the 8th instant with reference to the question of whether Chapter 5922, Acts of 1909, applies to County Judges' Courts with reference to the question of whether or not such courts should have two rule days in each month.

Replying to your inquiry, I beg to advise that I think in view of Section 2058, General Statutes 1906, when read in connection with Chapter 5822, above mentioned, that

County Judges' Courts should have two rule days each month.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

VOTERS, LISTS OF NOT REQUIRED TO BE PUBLISHED BEFORE PRIMARY ELECTION.

Tallahassee, Fla., May 16, 1918.

Dear Sir:

I am in receipt of your letter of May 13, in which you desire to know whether the Primary Law requires that you have published a list of the qualified voters who are qualified to vote in the primary election to be held on June 4th; also as to the last day on which poll taxes may be paid.

Replying to your inquiry I beg to advise that I do not think that the Primary Election Law requires that you have published the qualified voters as mentioned in your letter before the primary. May 11th was the last day on which poll taxes could be paid in order to qualify to vote in the primary election to be held June 4th.

Yours very truly,
 VAN C. SWEARINGEN,
 Attorney General.

PRIMARY ELECTIONS—WHEN CANDIDATES MAY
QUALIFY.

Tallahassee, Fla., May 16, 1918.

Dear Sir:

I am in receipt of your letter of May 15th, and I understand therefrom that you desire me to write you upon the following question: May one become a candidate in the primary after the time fixed in section 19 of the Corrupt Practices Act for filing the first statement of campaign expenses which candidates are required to file?

My answer is as follows: By section 26 of the Primary Election Law one may qualify as a candidate twenty days previous to the day of the primary election, and it is clear, under this statute, that one may become a candidate twenty days previous to the primary election who was not prior to that time a candidate. In such a cast I think it would not be necessary to file the first statement of campaign expenses, for the very obvious reason that such person was not at the time when the statement was required to be filed a candidate, but became a candidate later and after the last day for filing such statement.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

PRIMARY ELECTIONS--TIME FOR COUNTY CANDIDATES TO QUALIFY.

Tallahassee, Fla., May 20th, 1918.

My Dear Sir:

Section 26 of Primary Law requires county candidates to qualify not less than twenty days before day of primary.

Very truly yours,
VAN C. SWEARINGEN,
Attorney General.

My answer is as follows: If section 26 of the Primary Election Law one may qualify as a candidate twenty days previous to the day of the primary election and it is clear that a person may become a candidate twenty days previous to the primary election in such a case I think it would not be necessary to file the first statement of campaign expenses for the reason that such person was not at the time when the

POLL TAX, TIME FOR PAYMENT
Tallahassee, Fla., May 25, 1918.

Dear Sir:

Your letter of the 23d instant duly received and note that you say that people in Bay County have been advised that under the recent decision of the Supreme Court they could pay their poll taxes up to the 18th instant.

The decision referred to, 74 Southern 486, holds that, "The second Saturday in the month preceding the day upon which said election shall be held means 'Calendar month' or that period of time elapsing between a given date and the corresponding day of the next proceeding month by name."

The election is to be held on June 4th. The corresponding date of the preceding month would be May 4th, which falls on Saturday. It would seem that May 4th would then be the first Saturday and that the 11th would be the second Saturday. It might be that Satur-

day 4th would be excluded being the first day, however, this office has so far advised that Saturday the 11th would be the last day to receive poll taxes in order to avoid the question. I will also advise that this question has not been looked into very thoroughly because of the rush of business in this office. It might be that the courts would hold that the 18th was the last day, but I am inclined to think that the 11th in the last day.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

**LIST OF QUALIFIED VOTERS, NOT PUBLISHED
BEFORE PRIMARY ELECTION.**

Tallahassee, Fla., May 31, 1918.

Dear Sir:

Your letter of the 30th instant duly received, and contents noted.

Replying to your communication will advise that the law does not require a list of the qualified voters to be published before the Primary Election. The law referred to applies to the General Election.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

PRIMARY ELECTION—WHEN NAME TO NOT
APPEAR ON BALLOT.

Tallahassee, Fla., June 3, 1918.

Dear Sir:

Your letter of the 31st ult., has been received, and in reply thereto beg to advise that Section 27 of Chapter 6469, Laws of Florida, Acts of 1913 (Bryan Primary Law) covers the subject matter mentioned in your letter, and your name,—you having no opposition,—will not have to appear upon the ballot.

Thanking you for your kind expressions and with kind regards, I am

Yours very truly,
VAN C. SWEARINGEN,
Attorney General.

TRUSTS, LAW PERTAINING TO.

Tallahassee, Fla., June 12, 1918.

Dear Sir:

Your letter of the 8th instant, with reference to the question of regulating the price of ice in Tampa, by Hon. Braxton Beacham, Federal Food Administrator, and his proposed plan for doing it, has been received.

Replying to your communication, I beg to advise that from the provision of Chapter 6933, Laws of Florida, Acts of 1915, it appears that the entering into of any agreement to fix the price of any article or commodity, or article of trade, use, merchandise, commerce, or consumption at a certain figure, so as to preclude a free and

unrestricted competition, as mentioned in said Chapter, would be a violation of its provisions.

Of course, you know that so far as the State is concerned no official has the authority to vary the terms of a statute.

To what extent the Federal Food Administrator for Florida has authority as a war measure to regulate matters of the kind mentioned, I am not advised.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

SUPERVISOR OF REGISTRATION, NOMINATION.

Tallahassee, Fla., June 14, 1918.

Dear Sir:

Your letter of June 8th with reference to the question of the office of Supervisor of Registration has been received, and I note what you have to say.

Replying to your communication, I beg to advise that in your letter of April 12 to me you ask whether Supervisors of Registration had to be elected by the people, or whethew they had to be appointed by the Governor, to which letter I replied on April 15 advising you that Supervisors of Registration are appointed by the Governor, which is correct.

The matter of whether or not Supervisors of Registration have to be nominated in the primary election is one that was not considered in replying to your letter because you did not ask anything about it.

Supervisors of Registration are, as a rule, elected in the primary, and where a person who is a candidate for such office has no opposition his name does not have

to appear on the ticket, but, of course, it would be necessary for him to file his statement and filing fee in accordance with the Primary Law. If some other party than yourself has done this, and you did not do so, then the other person would be considered as endorsed by the Primary Election for the appointment. The Governor does not have to appoint the party nominated in the primary, but, as a rule, he does so. I do not know of anything you could do with reference to being reappointed except to present the matter to the Governor making application for such appointment for his consideration.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

RECEIVED BY THE OFFICE OF THE ATTORNEY GENERAL

Tallahassee, Fla. June 14, 1918

BONDS, SURPLUS PROCEEDS OF DISPOSITION.

Tallahassee, Fla., June 22, 1918.

Dear Sir:

I am in receipt of your letter of the 20th instant, and note what you have to say.

Replying to your inquiries, I beg to advise that the \$1,000.00 of toll money which you speak of should, in my opinion, be placed to the credit of the Road and Bridge Fund of the County, and that it may be expended for Road and Bridge purposes as the County Commissioners may see fit and proper.

With reference to the question of the handling of the surplus funds from the bond issue by the Bond Trustees, I beg to advise that Section 884-J of the Compiled Laws of Florida, 1914 (Sec. 10, Chapter 6208, Laws 1911) provides that, should there remain any of the proceeds of the sale of said Special Road and Bridge Bonds after

paying for the construction of the improvement for which said bonds were issued, such surplus shall be held by the Bond Trustees and paid out by them, upon order of the Board of County Commissioners for the repair and maintenance of the roads and bridges within said Special District."

The above seems to answer your inquiries.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

PRIMARY ELECTIONS, FAILURE TO FILE STATEMENTS.

Tallahassee, Fla., October 1, 1918.

Dear Sir:

I am in receipt of your communication of the 24th ult., and in reply thereto I beg to advise that former Attorney General West in a letter written upon the subject contained in your letter, wrote as follows:

"It would appear, therefore, that the name of a person who was a candidate in the primary election held on the 2d instant, but who failed to file his statement as required by Section 19 of the Act above mentioned, could not be placed upon the ballot for general elections; but a person who was not a candidate in the primary probably should have his name placed upon the ticket as a candidate in the general election by complying with Section 212 of the General Statutes of 1906."

I have no good reason to hold to any other view than expressed by the former Attorney General in this communication.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

TAXING R. R. CO.'S UNDER FEDERAL CONTROL.

Tallahassee, Fla., November 27, 1918.

Dear Sir:

I am in receipt of a communication from Hon. J. C. Luning, State Treasurer, enclosing a copy of his letter of the 25th inst., to you in reply to your letters to him under date of November 7th and 9th, respectively relative to the License Tax paid by the Florida East Coast Railroad Company to the State Comptroller; also copy of letter from Judge J. B. Payne, General Counsel of the United States Railroad Administration, relating to the question of taxes on railroad companies under Federal control, also extract from the Treasury Department U. S. Internal Revenue Regulations No. 38 (Revised) "Relating to the Capital Stock Tax, etc."

As suggested in the letter of the State Treasurer to me I am writing you direct upon the subject involved in these several communications.

I have given careful consideration to these several communications, and have read the case referred to by Judge Payne (*McCoach v. Minchill Railway Co.* 228 U. S. 295.)

The Act of Congress (No. 107) approved March 21, 1918, the title to which is "An Act to Provide for the Operation of Transportation Systems while Under Federal Control, for the Just Compensation of their Owners, and for Other Purposes" provides in Section 15 as follows:

"That nothing in this act shall be construed to amend, repeal, impair, or affect the existing laws or powers of the States in relation to taxation, or the lawful police regulations of the several States, except wherein such laws, powers, or regulations may affect the transportation of troops, war materials, Government Supplies, or the issue of Stocks and Bonds."

The third paragraph of Section one of this act provides as follows:

"Every such agreement shall provide that any Federal taxes under the Act of October third, nineteen hundred and seventeen, or Acts in addition thereto or in amendment thereof, commonly called war taxes, assessed for the period of Federal control beginning January first, nineteen hundred and eighteen, or any part of such period, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just compensation; *that other taxes assessed under Federal or any other governmental authority for the period of Federal control or any part thereof, either on the property used under such Federal control or on the right to operate as a carrier, or on the revenues or any part thereof derived from operation (not including, however, assessments for public improvements or taxes assessed on property under construction, and chargeable under the classification of the Interstate Commerce Commission to investment in road and equipment), shall be paid out of revenues derived from railway operations while under Federal Control;* that all taxes assessed under Federal or any other governmental authority for the period prior to January first, nineteen hundred and eighteen, whenever levied or payable, shall be paid by the carrier out of its own funds, or shall be charged against or deducted from the just compensation."

As I read Section 15 of the Act of Congress above mentioned it seems clear to me that it was not the intention of the Federal government to cause any of the several States to be deprived of any tax provided for by law, on account of it assuming control of the transportation system, and it is my interpretation of that part of the above quoted provision of paragraph three of section one of the Acts of Congress, that I have underscored, that the tax (license tax to operate as a common carrier) as pay-

able by the Railroad Company who is operating them even though they be under government control and should be paid out of the revenue derived from its operation.

Yours very truly,

VAN C. SWEARINGEN,

Attorney General.

As I read Section 15 of the Act of Congress above mentioned it seems clear to me that it was not the intention of the Federal Government to cause any of the several States to be deprived of any tax provided for by law on account of its assuming control of the transportation system, and it is my interpretation of that part of the above quoted provision of paragraph three of section one of the Acts of Congress that I have underscored, that the tax license tax to operate as a common carrier as provided

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